

# Cargill B.V., Zaanlandse Olieraffinaderij

## Kalf 11 – 1509 AA Zaandam

### GENERAL TERMS AND CONDITIONS FOR THE RECEIPT, STORAGE, PACKAGING AND PROCESSING OF VEGETABLE AND ANIMAL OILS AND FATS

#### 1. General

1.1 These General Terms and Conditions shall be applicable to all contracts entered into by Cargill B.V., Zaanlandse Olieraffinaderij, having its corporate seat at Kalf 11 in Zaandam, hereinafter referred to as 'ZOR', relating to the receipt, storage, packaging and processing of vegetable and animal oils and fats, to the extent that the parties have not explicitly deviated there from in writing.

1.2 The general terms and conditions of the Customer shall not be applicable.

1.3 In these General Terms and Conditions, the following words shall have the following meanings:

(a) ZOR: the company that undertakes to perform and/or cause to perform one or more of the activities specified below.

(b) Customer: the person or entity that engages ZOR, for himself/herself/itself or on behalf of another, for the performance of the activities specified below.

(c) Products: animal and vegetable oils and fats and other solids, liquids, chemicals or gasses offered to ZOR for processing purposes, as well as any by-products and end-products resulting from the processing thereof.

(d) Processing: refining and any other treatment the products delivered undergo at ZOR, including melting, pouring, storage, packaging and shipment.

#### 2. Engagements

2.1 The Customer may engage ZOR orally, by telephone, by e-mail, by fax or by letter for the processing of products. The engagement may be confirmed by ZOR in writing or it may be confirmed as a result of ZOR starting the processing.

2.2 ZOR's confirmation of the engagement – together with these General Terms and Conditions – shall constitute the entire agreement between the parties.

#### 3. Delivery by the Customer

3.1 ZOR accepts the products ex tank vehicle, lorry, (tank)container, tank ship or otherwise at its plant in an 'as-is' condition.

3.2 ZOR shall be entitled to refuse products that may, in its judgement, pose a threat or cause damage to people, goods, site or storage space, or that may cause environmental nuisance, even if a contract relating to these products has already been concluded.

3.3 As for products that are in a damaged or defective state on arrival at the ZOR, ZOR shall be entitled but not obligated to represent the Customer's interests at the latter's risk and expense and to take remedial action. The Customer cannot derive any rights from the manner in which ZOR has handled the foregoing vis-à-vis ZOR.

3.4 ZOR assumes no liability whatsoever to the Customer with respect to the quality, composition, purity and quantity of the products upon arrival at the ZOR.

3.5 ZOR shall be entitled to damages and/or compensation for loss of profits and/or other costs and losses incurred as a result of any failure to bring in the products offered for processing purposes at the appointed time or because the products fail to satisfy relevant statutory regulations or the regulations included in Clause 6.4 of these General Terms and Conditions.

3.6 ZOR determines the time of arrival of the Products. Arrangements concerning delivery times shall be approximations only and do not mean that ZOR loses the right to fix the time of delivery by the Customer at an earlier or later point of time than initially agreed upon.

3.7 ZOR shall not be liable for costs incurred by the Customer because the time of arrival of the Products has been advanced or delayed.

#### 4. Dispatch

4.1 Upon completion, ZOR shall dispatch the products ex its works. ZOR is at no time the owner of the products and it is not a producer within the meaning of Article 185 *et seq.* of Book 6 of the Dutch Civil Code.

4.2 The Customer shall collect his/her/its goods on the day on which the contract is terminated or two (2) days after the termination of the processing at the latest – barring other agreements in writing. The same applies in the case of the premature termination of the contract.

4.3 If the obligation referred to under 4.2 is not met, ZOR shall at all times be empowered to clear the relevant storage space and move the products to another storage space at the Customer's risk and expense, without prejudice to its right to sell the relevant products by public auction at the Customer's expense without any notice of default and without judicial intervention being required, or to dispose of

and/or destroy them at the latter's expense if the costs of the public sale exceed the benefits thereof.

4.4 ZOR shall be entitled to damages and/or compensation for loss of profits or for other costs and losses incurred as a result of the failure by the Customer to collect in a timely fashion the products processed by ZOR.

4.5 The time of dispatch shall be determined fully independently by ZOR. Arrangements concerning dispatch times shall be approximate only and do not mean that ZOR loses the right to effect dispatch at an earlier or later point of time than initially agreed upon.

4.6 ZOR shall not be liable for costs or damage incurred by the Customer because the time of dispatch has been advanced or delayed.

#### 5. Quantities

5.1 Taking into account the tanks available to it and their volumes, ZOR makes a binding determination regarding the quantity of the products to be supplied by the Customer. For reasons of storage capacity as well, ZOR is free to determine the off-take quantity in terms of total tank capacity.

#### 6. Inspection of the Products

6.1 With respect to all products offered for processing purposes, the Customer shall provide written information about their nature, kind, quality, composition, temperature, weight, volume, value, origin, hazard class, and also all other relevant properties and details that ZOR should know about. The contract and the consignment note are important in this context.

6.2 The Customer shall be liable for the supply of written information as set out in Clause 6.1 and shall be responsible for the integrity with respect to, *inter alia*, the food safety of the product delivered. ZOR shall never be liable for the inaccuracy and incompleteness of this information and/or the consequences arising from the Customer's written product specifications.

6.3 ZOR shall be entitled to refuse products after inspection, if they fail to satisfy (i) the regulations included in Clause 6.4 or other regulations applicable to the products;

(ii) the Customer's specifications, and/or

(iii) the conditions used by ZOR, without prejudice to its right to recover costs and damage already incurred as a result of a loss of profits from the Customer.

6.4 The Customer shall be obliged to satisfy, amongst others, the regulations concerning:

(i) authorisation and labelling of GGOs and genetically modified food and feed;

(ii) the indication of ingredients in foodstuffs that are on the list of allergen products and

(iii) sealing and certification of organic products.

6.5 If it turns out that the Customer has in any way provided incorrect information, the Customer shall be liable to the ZOR for all damage or loss, including any consequential loss and damage or loss suffered by other clients of ZOR.

#### 7. Sample Taking

7.1 ZOR shall be entitled to take at least two samples of each product offered for processing purposes at the Customer's expense before it is stored in ZOR's tanks.

7.2 If there are any differences of opinion about the quality of the products brought in, the samples taken by ZOR and ZOR's analysis thereof shall be binding.

7.3 ZOR may use the information obtained from the samples taken as a basis for the calculation of its fee.

7.4 If the Customer has indicated a wish to be present at the sample taking in advance and in a timely fashion, the Customer or a person designated by the latter shall be entitled thereto.

#### 8. Storage

8.1 If certain products require special storage, the Customer shall notify ZOR thereof in writing in advance, failing which ZOR can never be held liable for any loss or damage suffered as a result of any deficient storage.

8.2 The costs relating to special storage shall be borne fully by the Customer.

8.3 Any loss of quality or quantity as a result of prolonged storage shall not be at ZOR's expense and risk.

8.4 Storage costs shall be charged on the basis of full months, and a part of a month is counted as a full month.

### **Insurance during Storage**

8.5 The Customer shall take out insurance for the products for the entire term, commencing on the date of arrival at the ZOR of the starting product and ending on the date of dispatch of the by-product and end-product. The products must at least be insured against fire, (bio)terrorism and the like.

### **9. Special Processing**

9.1 If specific products require special processing, the Customer shall give prior notice thereof, in the absence of which ZOR shall never be liable for loss and/or damage because of any deficient processing.

9.2 The special processing costs shall be fully borne by the Customer.

### **Quantity Loss and By-products**

9.3 The loss of quantity inherent to the processing process shall not be at ZOR's expense and risk.

9.4 By-products released during the processing shall not be stored separately but are mixed with other by-products already stored. Unless otherwise explicitly agreed on in writing or unless ZOR informs the Customer before dispatch that the latter must pay for the removal of the by-products, ZOR shall acquire the ownership of the by-products at the date of the dispatch and from that date, ZOR may also choose to sell these by-products.

### **10. Packaging**

10.1 In the absence of any agreement to the contrary, the Customer shall deliver packaging material to ZOR duty paid.

10.2 If it has been agreed that ZOR is to take care of packaging materials, the costs thereof plus an additional charge shall be passed on to the Customer. The same applies to all other additional packaging activities and costs relating thereto that have to be incurred.

10.3 ZOR offers only new and unused packaging materials. If the products require special packaging and/or packaging techniques, the Customer shall inform ZOR thereof in a timely fashion, failing which ZOR shall never be liable for any loss and/or damage resulting from any defective or dirty packaging.

10.4 If the Customer wants to use or reuse used packaging materials, ZOR can never be held liable for loss and/or damage as a result of any defective or dirty packaging.

### **11. Liability**

11.1 All storage, packaging and processing activities shall be at the Customer's expense and risk, unless the Customer proves that the damage or loss can be imputed to intent or gross negligence on the part of ZOR. The ZOR processes many products and cannot exclude mingling of the Products with those of other Customers.

11.2 To the extent that any errors in the process are attributable to intent or gross negligence on the part of ZOR, ZOR's liability shall be limited to the processing price and to the demonstrated depreciation of the goods, which demonstrated depreciation is finally established by the insurance experts of the ZOR. ZOR shall never be liable for any loss of profits or consequential loss.

11.3 The Customer shall compensate ZOR fully for all damage or loss arising from the presence, use, supply, removal and the processing of the Customer's products, unless the Customer proves that the damage or loss has been caused by ZOR's incorrect handling of the products.

11.4 The Customer shall indemnify ZOR against all claims of third parties against ZOR relating to the products entrusted to ZOR by the Customer, or relating to the processing of the products. The indemnification also applies to rights of third parties in connection with Article 185 *et seq.* of Book 6 of the Dutch Civil Code.

### **12. Force Majeure**

12.1 ZOR shall never be liable for any damage, loss, claims of third parties, penalties and/or costs, irrespective of the manner in which they arose, as a result of force majeure.

12.2 The following situations, *inter alia*, shall constitute force majeure for ZOR:

- (a) Quality changes the products undergo as a result of time lapse, relocation, temperature, weather conditions, humidity degree, dryness factor and air supply.
- (b) Hidden defects in the storage space, pipes, pumps, scaffolding, foundations and other instruments.
- (c) Government regulations or other statutory provisions.
- (d) Mobilization, war, rebellion, revolution, acts of war, epidemics, strikes, industrial actions, instances of work-to-rule, sabotage, import bans, export bans and transit bans or similar restrictions.
- (e) Acts of God, flood, water damage, fire, frost, disruptions in the energy supply, defects in machinery, such as computer breakdowns.
- (f) An attack of (bio)terrorism.
- (g) All other circumstances ZOR was not able to avoid in reasonableness.

### **13. Rescission**

13.1 ZOR shall be entitled to rescind the Agreement without judicial intervention and notice of default being required and cease the activities thereunder on the date of the Customer's death, or if the Customer is declared bankrupt, applies for a court-ordered moratorium on payments, leaves his/her/its place of residence or place of business, as the case may be, without notifying ZOR of a new address in a timely fashion, if any of the Customer's assets are attached, or if the Customer loses the power to dispose of his/her/its property or any part thereof.

13.2 Any existing claims between the parties shall become immediately due and payable upon the date of rescission. The Customer shall be liable for the damage or loss incurred by ZOR, including loss of profits and manufacturing, packaging and storage costs.

### **14. Retention, Right of Pledge and Right of Set-Off**

14.1 By entering into the Agreement, the Customer grants ZOR a right of retention, a right of pledge and a right of set-off in respect of all products and/or moneys that ZOR retains for the Customer as security for the payment of all of ZOR's claims or future claims of whatever nature against the Customer or one of its group companies.

### **15. Prices and Price Changes**

15.1 Prices quoted in the order confirmation shall be approximations only. They concern only the activities listed therein, without taking into account any future price rises. All unforeseen work and all costs that relate to the execution of the order shall be borne by the Customer and shall be charged at the prices and/or rates ZOR normally asks.

### **16. Terms of Payment**

16.1 All payments shall be made within the period mentioned in the invoice. If this term is exceeded, default interest at a rate of 1.5% per month shall be charged on outstanding invoice amounts, calculated with effect from the invoice date until the date of payment, all this without any further demand for payment or default notice being required.

16.2 All judicial and extra judicial collection costs shall be charged to the Customer. The extra judicial collection costs amount to at least 15 % of the amount to be collected, exclusive of default interest.

16.3 If the Customer remains in default of payment, ZOR shall be entitled to suspend deliveries upon completion, or to demand cash payment on completion

16.4 ZOR shall at all times be entitled to demand advance payment and/or security for all of ZOR's existing or future claims against the Customer.

### **17. Complaints**

17.1 Complaints about insufficient quantity, quality, packaging and/or deficient storage shall be reported to ZOR by registered letter within 8 days after delivery upon completion at the latest.

17.2 Complaints shall give no entitlement to the suspension of payments. The Customer waives his/her/its right to invoke set-off. Deliveries shall not be subject to any discount.

### **18. Guarantee**

18.1 ZOR guarantees that it will perform the manufacturing activities to the best of its ability. There is no guarantee, however, that the expected processing loss and quality expectations will be met.

18.2 If the processing loss is higher and the quality less than expected, this shall be at the Customer's expense and risk and ZOR shall not be liable to pay damages.

### **19. Customs and Excise Provisions**

19.1 The Customer shall provide all information and documents relating to products that are subject to customs and excise regulations or tax regulations in a timely fashion in order to enable ZOR to file the relevant declarations.

19.2 Any clearance costs shall be borne by the Customer. The latter shall indemnify ZOR against all inaccurate and/or incomplete data that may have been issued to the relevant authorities by anyone.

### **20. Governing Law and Settlement of Disputes**

20.1 This Agreement shall be governed by Dutch law. To the extent that American mandatory federal regulations are applicable to ZOR because it is part of an American group of companies, this Agreement shall also be governed by these mandatory American rules. Disputes arising under or in connection with the performance thereof shall be referred to the competent court in Amsterdam, to the exclusion of all other courts, subject to cassation proceedings and ZOR's right to refer the case to another court of its choice.

### **21. Filing and website reference**

21.1 These General Terms and Conditions were filed at the Registry of the Amsterdam District Court on December 24, 2007 under number 182/2007.

These General Terms and Conditions can also be found on the following website [www.zor.nl](http://www.zor.nl)