

CONDITIONS

AND

ARBITRATION RULES

of the

NETHERLANDS ASSOCIATION FOR THE TRADE  
IN DRIED FRUIT, SPICES AND ALLIED PRODUCTS

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CONDITIONS  
OF THE  
NETHERLANDS ASSOCIATION FOR THE TRADE  
IN DRIED FRUIT, SPICES AND ALLIED PRODUCTS

## **ARTICLE 1**

The Conditions of Nederlandse Vereniging voor de Handel in Gedroogde Zuidvruchten, Specerijen en Aanverwante Artikelen (N.Z.V.) [Netherlands Association for the Trade in Dried Fruit, Spices and Allied Products], hereinafter: "N.Z.V. Conditions", apply to the trade in dried fruit, spices and allied products

- between members of N.Z.V.;
- between members and non-members, and between non-members if so agreed by the parties or if these Conditions must be deemed to be applicable.

## **ARTICLE 2**

The N.Z.V. Conditions consist of

- a General Part "A" containing rules governing all transactions made on N.Z.V. Conditions;
- a Part "B" containing additional and specific rules relating to the trade in the products mentioned in Article 1 on the basis of FAS, FOB, CFR, CIF and similar terms;
- a Part "C" containing additional and specific rules relating to the trade in the products mentioned in Article 1 on other terms than those mentioned in Part "B".

## GENERAL PART "A"

### **ARTICLE 3**

#### Netherlands law

All contracts made on N.Z.V. Conditions shall be governed by Netherlands law, irrespective of the nationality or domicile of the parties, and in the event of any dispute concerning translations only the Dutch text of the N.Z.V. Conditions shall be binding.

### **ARTICLE 4**

#### Filing

The N.Z.V. Conditions have been filed at the Registry of the District Court in The Hague (number: 48/2008) and at the Chamber of Commerce Haaglanden (number: 40341013).

### **ARTICLE 5**

#### Confirmation

1. Confirmations of purchase or sale must be sent to the parties concerned no later than on the first working day (for the definition of "working day" see article 13, paragraph 13) following the day on which the transaction is concluded.
2. If no objection has been made against such confirmation by the first working day following receipt thereof, it shall be deemed to have been accepted.

### **ARTICLE 6**

#### Order of fulfilment of contracts

If several contracts for the same product have been concluded between the buyer and the seller on identical terms of shipment or delivery, such contracts must be fulfilled in the order in which they have been concluded and with due observance of the agreed time of shipment or delivery.

### **ARTICLE 7**

#### Force majeure

1. Any party who on account of any cause or event beyond his control wishes to plead force majeure must as soon as possible - and with due observance of the provisions of paragraphs 4 and 5 - notify the other party thereof and if so requested by the other party must at the earliest possible opportunity provide sufficient evidence to prove the validity of his plea of force majeure.
2. The existence of an event of force majeure shall - if necessary - be assessed by arbitrators and the consequences of force majeure shall - if necessary - be ascertained by arbitrators.
3. If the execution of the contract can be effected with additional charges and such execution is desired by the buyer, the additional charges shall be for the buyer's account.

4. If as a result of force majeure the goods or any part of them cannot be shipped within the agreed time, the seller shall give written notice of that fact to the buyer as soon as possible and in any event within 14 calendar days after expiry of the time for shipment agreed in the contract. In that case the time for shipment shall be extended by 30 calendar days; if the situation of force majeure still continues after this period has expired, the time allowed for shipment shall again be extended by 15 calendar days.
5. The buyer must accept such notice also after 14 calendar days have elapsed since the expiry of the time agreed for shipment in the event that he has not bought direct from the first seller, if the latter has in time given the notice referred to in the paragraph 4 of this article and each subsequent seller has transmitted said notice in writing to his buyer no later than on the first working day following said notice.
6. If the situation of force majeure continues for longer than 45 calendar days the contract shall be cancelled without settlement of any price difference or liability for any other payment.
7. Rescission of the contract in deviation from the foregoing and based on Section 6:265 of the Netherlands Civil Code is excluded.

## **ARTICLE 8**

### Default

1. Without prejudice to the provisions of paragraphs 3 and 4 of Article 10, if one of the parties fails to fulfil any of its obligations to the other party, the other party shall only be entitled, at its discretion, either to cancel the contract:
  - a. without liability to pay compensation;
  - b. and make a cover purchase or sell the goods or the documents conferring title to the goods through the intermediary of a broker or other agent of sound repute, such broker or agent to be notified in writing that the purchase or sale, as the case may be, is a cover transaction; and the other party being entitled to claim from the defaulting party compensation for any loss sustained as a result of a price difference; or
  - c. and claim from the defaulting party the difference between the contract price and the market value on the first working day following the default.
2. If one of the parties finds the price of purchase/sale as referred to under b. or the price difference as referred to under c. unacceptable, the price difference shall be determined by arbitrators. The calculation of the amount of compensation so to be determined must be based on the nominal contract weight.  
The defaulting party may be required to compensate the other party for costs and expenses incurred as a result of the default.

## **ARTICLE 9**

### Insolvency

In the event that prior to completion of a contract the buyer or the seller is evidently unable to meet his obligations or ceases payments or applies for a court order of suspension of payments or is adjudged a bankrupt, the contract shall be cancelled by operation of law and the other party shall be entitled to claim damages consisting of the difference, if any, between the purchase price and the market value on the working day on which the events referred to above may be deemed to be generally known, or at any rate known to the other party.

## **ARTICLE 10**

### Claims/complaints

1. Any claims/complaints by the buyer must be submitted in writing no later than on the date specified in Article 27 or in Article 36, whichever is applicable.
2. If prior to arrival of the consignment the buyer has sold that consignment to another and does not himself take delivery of the goods, he may still file a claim/complaint provided that he shall send notice of such claim/complaint no later than on the first working day following receipt of the claim/complaint from his buyer and on condition that the latter has likewise observed the prescribed term.
3. If the buyer considers that the quality of the goods does not meet the agreed standard of quality, he shall not be entitled solely on that ground to demand cancellation of the contract, with or without damages, but in that case may claim compensation for the difference in value.
4. However, if the difference in value is of an exceptional nature or if the goods delivered are not of the kind, origin, packing, grade or crop contracted for, the buyer may demand cancellation of the contract with or without damages. The decision as to whether such claim is to be granted shall be at the sole discretion of arbitrators.

## **ARTICLE 11**

### Disputes

1. All disputes arising from or in connection with contracts made on N.Z.V. Conditions and relating to the trade in products as referred to in Article 1, or arising from or in connection with any agreement subsequent or supplementary to such contracts, shall be settled by arbitration in accordance with the N.V.Z. Arbitration Rules which are considered to be part of these Conditions.
2. If any party involved in arbitration does not conform to an award of arbitrators from which there lies no appeal, the N.V.Z. shall be authorized to disclose that fact, in a manner to be decided by the N.V.Z., to the members of the N.V.Z. as well as to any other interested parties.

## **ARTICLE 12**

Changes in freight rates, duties, taxes, etc.

1. All goods which have been sold for shipment or in transit or for forward delivery or cleared through customs and which at the time of sale are not in the open market shall be deemed to have been sold on the basis of such freight rates, taxes and/or surcharges thereon and customs, excise or other duties or taxes imposed by proper authorities as were generally known at the time when the contract of purchase was concluded.
2. Any increase or decrease in the freight and other rates referred to in paragraph 1 which has become generally known after the contract of purchase was concluded and which may lead to a change in the agreed price shall be for the account or, as the case may be, for the benefit of the buyer.

### **ARTICLE 13**

#### Definitions

1. "Approximately" or "approx." written before the quantity means: the seller is entitled to deliver 5% more or 5% less.
2. "Reply on a certain day" means: in the possession of the party concerned, but no later than 17.00 hours (5 p.m.).
3. Delivery terms are interpreted and construed in accordance with "Incoterms 2000".
4. If the contract between the buyer and the seller contains delivery terms which are not explicitly defined in the Incoterms 2000, such terms should, to the extent possible, be interpreted in accordance with their closest equivalent in the Incoterms 2000 (for instance: the terms F.O.T. and F.O.R. are to be interpreted in accordance with their equivalent FCA. The term Franco shall be interpreted in accordance with its equivalent DDP or DDU).
5. "Immediate shipment" means: shipment to take place no later than 10 calendar days after the date of contract.
6. "Prompt shipment" means: shipment to take place no later than 21 calendar days after the date of contract.
7. "Tel quel [as is]" means: without responsibility of the seller for quality and packing.
8. "On supervision of quality" means: the buyer is entitled to inspect the goods selected for him by the seller and to reject the goods if they do not meet the description on which he has bought them, provided the buyer shall inform the seller of the rejection no later than on the first working day after the seller has given him the opportunity to inspect the goods. Any dispute on this shall be decided by arbitration. If the rejection is accepted by the seller or if the arbitrators find the rejection justified, the contract of purchase shall ipso facto be cancelled without any liability to pay damages.
9. "On approval" means: the buyer is entitled to inspect the goods selected for him by the seller and to reject the goods without giving reasons, provided the buyer shall inform the seller of the rejection no later than on the first working day after the seller has given him the opportunity to inspect the goods. Failing this the goods shall be deemed to have been approved. If rejection takes

- place in time, the contract of purchase shall ipso facto be cancelled without any liability to pay damages.
10. "On approval of sample" means: the buyer is entitled to reject the sample sent to him by or on behalf of the seller, without giving reasons for his rejection, provided the buyer shall inform the seller of the rejection no later than on the first working day after receipt of the sample. Failing this the sample shall be deemed to have been approved. If rejection takes place in time, the contract of purchase shall ipso facto be cancelled without any liability to pay damages.
  11. "Goods inspected" means: from the moment when the contract of purchase is concluded the seller is no longer responsible for the quality and packing of the goods sold.
  12. "Written" or "in writing" means: by telex, telefax, telegram, letter or e-mail.
  13. "Working days" means: all calendar days except Saturdays, Sundays and public holidays applicable to the parties involved. A working day is deemed to begin at 9.00 hours (9 a.m.) and to end at 17.00 hours (5 p.m.).

#### **ARTICLE 14**

##### Arbitration on quality

1. If a complaint on quality is to be settled by arbitration, such arbitration shall be conducted, at the buyer's choice, either:
  - a. by the arbitrators examining the goods or samples drawn by order of the arbitrators;
  - or
  - b. by the arbitrators examining samples drawn in accordance with paragraph 3 of this article.
2. If arbitration is conducted by examination of the goods and/or of samples drawn by order of the arbitrators, the goods - either the entire consignment or part thereof, at the discretion of the arbitrators - must be present in their original state and condition.
3. Samples intended for examination by arbitrators shall be drawn on the buyer's behalf and at his expense, in the presence of a supervisor to be appointed by the seller, in the manner customary for the branch of trade concerned by a neutral person, company or organization of sound repute whose business is or includes the drawing of samples in the interests of others. The samples must be sealed by the supervisors of the buyer and the seller. Furthermore, if the seller so wishes, for his benefit and at his expense one or more additional samples shall be drawn and sealed at the same time and in the same manner.
4. Sample-taking must be completed within 12 calendar days after unloading of the goods at the place of destination. In the case of consignments which at the time of unloading are not yet fully cleared and released to the buyer, sample-taking must be completed no later than 12 calendar days after such clearance and release has been effected.
5. The buyer shall forfeit his rights relating to a complaint on quality if he fails to call in time upon the cooperation of the supervisor appointed by the seller, or



- save in exceptional circumstances - if the period mentioned in paragraph 4 of this article has been exceeded.
6. Samples may be drawn and sealed by the buyer in the absence of the seller or his supervisor only:
    - a. if expressly so agreed by the buyer and the seller; or
    - b. if the seller has failed to appoint a supervisor in time, or if the seller or his supervisor, although having been duly notified by the buyer of the place and the time of sample-taking, is not present at the appointed place and time. In that case the seller must accept the sealed samples such as these have been drawn in the manner indicated in paragraph 3 of this article but without supervision of and sealing by the seller's supervisor.
  7. The seller shall be entitled to draw unsealed samples from the consignment before weighing takes place; the value of such samples shall be for the seller's account.

#### **ARTICLE 15 A**

##### Cancellation of contracts

If the buyer has refused or failed to fulfil obligations to the seller imposed on him under a contract, the seller shall be entitled to suspend the performance of any other contracts made with the buyer on these N.Z.V Conditions until such time as the buyer has fulfilled his obligations. Costs and expenses incurred as a result of such suspension shall be for the account of the defaulting buyer. If such suspension has continued for more than 30 calendar days the seller shall have the right to cancel said contracts, either with or without application of the provisions of Article 8 concerning compensation for costs and losses.

#### **ARTICLE 15 B**

##### Reservation of ownership

The property in the goods shall not pass to the buyer until the buyer has fulfilled all his obligations of payment, including interest and costs, arising out of the contract concluded between the parties. In the event that the buyer should fail to fulfil any of his obligations to the seller, the seller shall be entitled to recover possession of the goods to which the seller's reservation of title relates, which recovery of possession the buyer shall enable the seller to perform, without any demand, notification by writ served by a bailiff, judicial intervention of any other similar measure by the seller being required. The buyer shall only be entitled to dispose of the goods or process the same if such disposal or processing forms part of the normal course of business of the buyer.

#### **ARTICLE 16**

##### Transitional provision

The amended N.Z.V. Conditions come into force on 1st July 2005

and are applicable to contracts, as mentioned in article 1,  
concluded on or after 1st July 2005.

## **PART "B"**

### **ARTICLE 17**

#### Shipment

1. Shipment may be made in one single consignment or by instalments, either direct or indirect, with or without transshipment. Each instalment shall be treated as a separate contract.
2. Save for proof to the contrary, the date of the shipping document shall be taken as the date on which the goods were shipped. A "received for shipment" bill of lading does not constitute a valid shipping document.

### **ARTICLE 18**

#### Tender

1. If goods have been despatched by sea-going vessel the seller must inform the buyer of the name of the ship within 14 calendar days from the date of shipment but no later than 1 calendar day before the expected date of arrival of the ship. The buyer shall be required to pass on the tender to his buyer no later than the first working day after receipt thereof.
2. If goods have been despatched by other means than by sea-going vessel the seller must as soon as possible after despatch inform the buyer of the details of such other means of carriage.
3. Any mistake on the carrier's part and any error which can be shown to have been caused by the use of the means of communication used in the case concerned must be rectified by the seller as soon as possible after discovery of such mistake or error.
4. Consignments which at the time of tender had been lost or had suffered serious damage may no longer be tendered as and when the seller may be deemed to be aware of that fact, unless the seller has prima facie evidence to show that he was unable to submit the tender any earlier.
5. A tender may not be withdrawn, unless the parties expressly agree otherwise.

### **ARTICLE 19**

#### Presentation of documents

1. The documents must be presented to the buyer at the earliest possible opportunity but no later than on the last working day before arrival of the means of carriage.
2. If the seller can prove that the documents were presented to him too late or reached him too late due to negligence on the part of the post office or the bank or through circumstances beyond his control, and that he has immediately taken the necessary action to take up the documents concerned and present them to the buyer, he cannot be held liable for any costs, expenses and/or loss on account of late presentation of documents.
3. Any costs, expenses and/or loss incurred through negligence by the buyer shall be for the buyer's account.

4. The buyer shall not be entitled to raise objections to variations of minor significance in despatch, markings and numbers of packages or in the details of the means of carriage, provided that upon arrival the consignment can be identified as the consignment intended to be delivered in the tender concerned.

## **ARTICLE 20**

### Payment

1. Payment must be made, even in the event that the goods have been lost or damaged during transit, upon first presentation against surrender of a complete set of documents.
2. If the agreed or usual documents or any copies of said documents are missing, the seller must furnish a bank guarantee therefore and such bank guarantee shall take the place of the missing documents.
3. A sub-order or delivery order issued by the carrier shall also be regarded as a shipping document; such instruments must specify, among other things, the date of despatch as shown on the shipping document as well as the number of that document. They may not contain any clauses serving to reduce the carrier's liability. The buyer shall not be entitled to refuse to accept as documents such instruments as aforesaid issued by banks, warehousemen or forwarding agents.
4. If payment on arrival has been agreed upon, payment must be made immediately when the means of carriage arrives at the place of destination. In the event of arrival on a day other than a working day, payment must be made on the first working day after arrival of the means of carriage at the place of destination. If the means of carriage has been lost or has suffered delay through whatever event, payment must be made on the calendar day or on the first working day after the day on which according to the latest reported news the means of carriage would have arrived at the place of destination.

## **ARTICLE 21**

### Brokerage, commission

Brokerage and/or commission shall be payable even if delivery has not taken place. The obligation to pay brokerage/commission shall cease only if the contract is not performed on account of force majeure or insolvency of the buyer.

## **ARTICLE 22**

### Risk

All risks of the journey or voyage shall be borne by the buyer.

## **ARTICLE 23**

### Freight

1. Subject also to what is provided in this respect in Article 12, freight and other duties, taxes and/or surcharges thereon shall be no other than those payable under the documents on which shipment has taken place. If as a result of unloading in a port of refuge or through whatever other cause additional or new freight or any other charges should become due, such freight or charges shall be for the account of the buyer.
2. Freight may be paid in advance or, at the seller's option, may be made payable at destination.

## **ARTICLE 24**

### Transport insurance

1. If goods are sold on CIF terms the seller must take out with (an) insurance company/companies of sound repute the usual transport insurance, without franchise, including war risk cover, war risk insurance premium in excess of ½% to be for the account of the buyer. The goods must be insured for the contract price plus 10%.
2. In the case of goods already shipped and insured which have been sold on FAS, FOB or CFR terms, the buyer must take over the transport insurance including war risk cover.

## **ARTICLE 25**

### Checking

Checking of the goods by the buyer shall be done at the place of destination or the place of unloading, as the case may be.

## **ARTICLE 26**

### Weighing, short weight

1. Weighing shall be done per individual package or in drafts, according to local custom, to within 100 grams exactly; weighing of groundnuts, however, shall be done to within 250 grams exactly.
2. Short weight in excess of 1% of the shipped weight, based on the total of the undamaged packages, must be made good by the seller to the buyer, provided that the weight has been determined by sworn weighers at the place of unloading within 12 calendar days after unloading. The weighing charges shall be for the account of the buyer.
3. If the seller or his representative so desires, provided such wish is expressed in good time, the seller or his representative must be given the opportunity to verify the weighing. The cost of such verification shall be for the account of the seller.
4. In the event of damaged and/or missing packages the weight of such packages shall be calculated on the basis of the average weight of the undamaged packages.

## **ARTICLE 27**

### Claims/complaints

1. Any claims/complaints by the buyer must be submitted in

writing (if one or both of the parties are situated abroad, by telex, telefax, telegram or e-mail) and must be sent to the address of the seller or, if the seller is not situated in the Netherlands but has a representative there, to the address of the seller's representative no later than 12 calendar days after unloading.

2. If at the time of unloading the documents have not yet been presented, the period mentioned in paragraph 1 of this article shall be counted from the date on which the documents have been presented.

## **ARTICLE 28**

### Documentary credit

If the parties have agreed that payment shall be made by means of documentary credit, the buyer shall ensure that the documentary credit will be available to the seller at such a time that the seller is able to fulfil his contractual obligations.

In the event that the buyer should fail to fulfil the above obligation, he shall be in default of the fulfilment of his obligations as referred to in Article 8.

## **ARTICLE 29**

Vacant

**PART "C"**

**ARTICLE 30**

Ex quay

1. Delivery of goods which have been sold ex quay must be taken by the buyer at the place where the goods are located and within 7 working days after the purchase has been concluded, unless the parties have agreed otherwise.
2. If goods have been sold "free on truck", the handling and loading charges, stowage included, shall be for the account of the seller. If goods have been sold "ex works"/"ex warehouse"/"ex store"/"ex quay", the handling charges shall be for the account of the seller. If goods have been sold "lying at works"/"lying at warehouse"/"lying at store", said charges shall be for the account of the buyer.
3. During the period of time allowed before payment for a consignment of goods has to be made ("the prompt") the goods shall lie at the risk and for the account of the seller until the buyer has taken delivery of the goods. After delivery has been taken or the prompt has expired, as the case may be, the goods shall lie at the risk and for the account of the buyer.
4. The seller shall not be deemed to carry an open-market stock of the goods sold duty paid.
5. Taking delivery by instalments shall be permitted only with the approval of the seller.

**ARTICLE 31**

Forward delivery

If goods have been sold for forward delivery the seller must despatch (or cause others to despatch) such goods within the agreed time. If for spot goods immediate delivery has been agreed upon, such goods must be despatched within 5 working days.

**ARTICLE 32**

For shipment or in transit

1. Shipment shall be made in one single consignment or by instalments, either direct or indirect, with or without transshipment. Each instalment shall be treated as a separate contract.
2. Save for proof to the contrary, the date of the shipping document shall be taken as the date on which the goods were shipped.
3. If goods are sold for shipment or in transit, the seller shall be entitled not to deliver the goods if they have not arrived safely at the place of unloading.
4. If the seller has undertaken responsibility for forwarding the goods from the place of unloading, the buyer must give the seller timely instructions regarding carriage and destination. If upon arrival of the goods the seller has received no forwarding instructions from the buyer, the seller shall despatch the goods to the buyer's address by

- whatever means of carriage he may think the most suitable for the purpose.
5. In the event that goods sold for shipment or in transit must be delivered at the place of unloading, the buyer must take delivery of such goods at the place of unloading immediately after he has been notified by the seller that the goods are ready for delivery.
  6. The seller shall be entitled to demand payment immediately after he has given notice as aforesaid, even in the event that the buyer does not take delivery. All costs and expenses incurred as a result of the fact that the buyer has not taken delivery of the goods immediately after the seller's notice shall be borne by the buyer.
  7. If goods sold for shipment or in transit are not unloaded in the Netherlands as a result of any dock strike in this country, the seller shall be entitled to charge the extra freightage incidental to such unloading outside the Netherlands to the buyer's account.

### **ARTICLE 33**

#### Payment

1. Payment must be made, without any reduction or discount, within 8 calendar days after the goods have been delivered. A request for arbitration shall not suspend this term.
2. However, even if other terms of payment have been agreed upon, the seller shall be entitled at all times to demand payment on delivery.
3. The buyer who does not timely perform his payment obligations is liable for all costs and damages arising as a result thereof. In addition, interest will be due at a rate equal to the refinancing interest rate of the European Central Bank plus 3.75%, at the time of the buyer's default and thereafter, or any amount outstanding during the buyer's default of payment.

### **ARTICLE 34**

#### Brokerage, commission

1. In transactions concluded through the intermediary of a broker or agent the seller shall be required to pay at least 1% and the buyer shall be required to pay at least ½%, or (as the case may be) both of them shall be required to pay so much as is customary for the product concerned, to that broker or agent by way of remuneration for his services, such brokerage or commission to be stated in the purchase confirmation.
2. Payment of buying brokerage or commission shall not be obligatory in a contract of which the invoice value of the goods is more than € 10.000,--.
3. Brokerage and/or commission shall be payable even if delivery has not taken place, unless the contract is not performed as a result of force majeure or on account of insolvency of the buyer.

### **ARTICLE 35**



### Weights and weighing

1. The goods shall be sold at their original weight, provided that any short weight in excess of 1% must be made good by the seller. Any damaged packages must be weighed on delivery. However, if weighing on delivery has been agreed upon, the cost of weighing shall be for the account of the seller.
2. The expression "net original weight" means the net weight as this is noted on the packing or, in the absence thereof, as this is customary for the product concerned.
3. Weighing shall be done per individual package or in drafts, according to local custom, to within 100 grams exactly; weighing of groundnuts, however, shall be done to within 250 grams exactly.
4. If the terms on which the contract of purchase has been concluded include "deduction of tare", the calculation for that purpose shall be based on the tare which is noted on the packing or, in the absence thereof, the tare stated by the consignor as shown in his weight note or invoice or, in the absence thereof, the tare such as this is customary for the product concerned.
5. If the tare cannot be calculated on the basis as indicated in paragraph 4 of this article, the tare must be determined by weighing the packing material of 10 packages, rounded up or down to the nearest 100 grams, the cost of such weighing to be borne by the party found to be in error.
6. "Particular tare" or "real tare" means: the actual tare, the weight of the packing material to be determined by weighing a maximum of 10 empty containers of the consignment, rounded up or down to the nearest 100 grams. "Customary tare" or "regular tare" means: the tare such as this is customary for the product concerned.

### **ARTICLE 36**

#### Claims/complaints

1. Subject to what is provided in this respect in Article 10, any claims/complaints must be sent direct to the seller no later than 3 working days after receipt of the goods.
2. If a claim/complaint concerns goods delivered on / alongside / in the means of carriage, the term of 3 working days mentioned in paragraph 1 of this article shall begin on the date of unloading at the place of destination. This provision shall not affect the provision on the risks during the journey or voyage.

### **ARTICLE 37**

Vacant

### **ARTICLE 38**

Vacant

ARBITRATION RULES  
OF THE  
NETHERLANDS ASSOCIATION FOR THE TRADE  
IN DRIED FRUIT, SPICES AND ALLIED PRODUCTS

## **BASIS FOR ARBITRATION**

### ARTICLE 1

1. All disputes between members of the Nederlandse Vereniging voor de Handel in Gedroogde Zuidvruchten, Specerijen en aanverwante artikelen (N.Z.V.), arising from the trade in dried fruit, spices and allied products, shall be settled by arbitration as laid down in these Rules, unless otherwise agreed upon in writing by the parties.
2. Former members of the N.Z.V. shall remain bound by the Arbitration Rules in all disputes arising from obligations incurred, or transactions effected, while they were still members.

### ARTICLE 2

1. All disputes between a member of the N.Z.V. and a non-member, or between non-members, arising from contracts concerning the trade in the aforesaid products or from subsequent contracts resulting from such contracts, shall also be settled by arbitration in accordance with these Rules, if these Rules and/or the conditions of the N.Z.V. have been declared or are deemed to be applicable to the original contract.
2. Any person who has acted as an intermediary in the conclusion of contracts as referred to in par. 1 of this article and has signed the relevant letter(s) of confirmation shall thereby become a party to the arbitration with respect to any dispute arising from the contract(s) or from his intermediation.

### ARTICLE 3

Disputes arising from the trade in products as referred to in art. 1 shall also be settled by arbitration in accordance with these Rules if the request for arbitration is accompanied with a deed of submission (compromise) in duplicate, signed by the disputing parties and meeting all legal requirements, in which these Arbitration Rules are declared applicable.

The President of the N.Z.V. (hereafter referred to as "President") shall insert the names of the arbitrators and, in the event of an appeal, the names of the appeal-arbitrators, following the procedure as laid down in articles 7 and 21.

By presenting such deed of submission the parties shall be deemed to have given their irrevocable assent to the appointment of arbitrators according to the above-mentioned articles.

## **ARBITRATION COMMITTEE**

#### ARTICLE 4

1. At the Annual General Meeting of Members of the N.Z.V., an Arbitration Committee shall be elected from which a Board of Arbitration shall be constituted, in the manner to be described hereinafter, for each dispute submitted for arbitration.
2. The number of members to be elected to the Arbitration Committee shall be decided by the Annual General Meeting.
3. Eligible for election to the arbitration committee shall be persons who are either themselves members of the N.Z.V., or partners or directors of partnerships or companies as referred to in art. 3 par. 1 of the Articles of Association, or authorized representatives of members.
4. All members of the Arbitration Committee must retire at the aforesaid Meeting but shall be immediately eligible for re-election.

#### **REQUEST FOR ARBITRATION**

#### ARTICLE 5

1. Except in the case mentioned in art. 3, a request for arbitration must be made within 30 calendar days after the date on which the dispute has arisen. Subject to compliance with the provisions of art. 10 and the provisions of art. 27 of the N.Z.V. Conditions, a request for arbitration concerning a dispute on quality must be made within 6 working days (for the definition of "working day" see art. 28, Para. 1) after the date on which the claimant could reasonably be aware of the complaint on quality, this at the discretion of the arbitrators.
2. If either of the parties to the dispute has no residence or business address in The Netherlands, the aforesaid periods shall be extended to 60 calendar days and 12 working days respectively.
3. The expiration of these periods shall - if such argument be advanced by the respondent - result in forfeiture of the right to make any claim unless the arbitrators find that there are grounds for agreeing to an extension of the time-limits, in which case they must state such grounds in their award.

#### ARTICLE 6

1. Notice of a request for arbitration must be given in writing (by letter, telegram, telex, telefax, or e-mail) to the President or the Secretary of the N.Z.V..

2. The final request for arbitration must be made on forms supplied for this purpose by the N.Z.V., obtainable from the President or the Secretary. The request must be submitted in sextuplicate, accompanied with such documentary evidence as may be considered necessary, likewise to be submitted in sextuplicate.
3. If notice of a request for arbitration has initially been given by letter, telegram, telex or telefax, or if the request has not been made using the aforesaid forms, the request must be repeated as soon as possible in the manner described in Para. 2 of this article. Failing this the President or the Secretary may, after issuing a warning, consider the notice as null and void. Said warning shall be sent by registered post.

### **APPOINTMENT OF BOARD OF ARBITRATION**

#### ARTICLE 7

1. After a request for arbitration has been received and the deposit due under art. 23 has been paid to the Treasurer of the N.Z.V., a Board of Arbitration, consisting of three members of the Arbitration Committee, shall be appointed by the President and two members of the Board of the N.Z.V. nominated by him. In the absence of members of the Board, he will nominate two ordinary members of the N.Z.V..
2. No person having any direct or indirect interest in the arbitration in question may assist in the appointment of arbitrators.
3. If necessary, non-members of the Arbitration Committee may be appointed as arbitrators.
4. The President shall give immediate notice of the appointment of the Board of Arbitration, by registered letter to the parties to the dispute. With the notice to the respondent he shall enclose one copy of the request for arbitration and one copy each of any documents submitted in evidence.
5. The President shall inform the arbitrators of their appointment by letter, such letter to state the amount of the deposit paid and also the name of the arbitrator who will act as Chairman.
6. In case of non-acceptance of any appointments, new appointments shall be made and new notices shall be sent in the manner as described above.

### **SOLE ARBITRATOR**

## ARTICLE 8

1. When a request for arbitration is made in accordance with articles 5 and 6 - except in cases of disputes on quality - application can also be made for the dispute to be decided by a single arbitrator. In such case the President shall immediately - after receipt of the required deposit -, by registered letter, send one copy of the request to the respondent, asking at the same time if the latter agrees to a decision by a single arbitrator. If on the fifth working day - or, should the respondent have no residence or business address in The Netherlands, on the tenth working day - after despatch of the aforesaid letter no negative reply has been received from the respondent, the President shall appoint a sole arbitrator following the procedure laid down in art. 7.  
If, however, within the time stated the respondent declares that he does not agree to the appointment of a single arbitrator, the arbitration shall proceed in the usual manner.
2. Articles 9 to 19 inclusive shall apply to arbitrations as referred to in paragraph 1 of this article, on the understanding that the sole arbitrator shall be considered to be "Chairman of the Arbitration Board" as well.
3. In case of an appeal, articles 20 to 22 inclusive shall apply.
4. As regards the costs of arbitration, articles 23 to 27 inclusive shall apply.
5. In appeal cases the amounts for fees and administration charges shall be as for ordinary arbitrations in first instance.

### **ARBITRATION PROCEDURE**

## ARTICLE 9

1. The arbitrators shall deal with the dispute with all practicable speed and only when they are all present. They may call in the assistance of a lawyer and/or registrar.
2. The arbitrators shall maintain secrecy with respect to all information concerning the parties and their business which may come to their knowledge as arbitrators.

## ARTICLE 10

1. The Chairman of the Board of Arbitration shall call the parties by registered letter to a hearing to be held by the arbitrators. He shall also inform the respondent of the latest date on which the respondent may - if he wishes - submit to the Chairman a written defence, in

quintuplicate, together with any documents he may wish to present, which should also be in quintuplicate.

2. If the respondent submits a written defence, the Chairman shall immediately send the claimant a copy thereof and also, if possible, copies of the documents submitted.
3. At the hearing the parties may in person or by proxy state and elucidate their respective positions.
4. Unless the arbitrators decide otherwise the parties may not be present at the inspection by the arbitrators of goods which are the subject of the dispute.

#### ARTICLE 11

1. If the arbitrators consider it desirable they may hold more than one hearing, in which case they shall give written or oral notice thereof to the parties or their proxies.
2. At the first hearing, the parties may amplify or modify their written claim or defence. After the first hearing, no further amplification or modification shall be permitted, except in special cases at the discretion of the arbitrators.
3. Should the claimant fail to appear at the first hearing, his claim shall be dealt with on the basis of his written request for arbitration. Should the respondent fail to appear, his written defence shall be taken as the basis on which his case shall be decided. If no written defence has been submitted, the claim shall be allowed, unless the arbitrators consider it to be unjustified or unfounded, or if they are of the opinion that there are grounds for giving the respondent a further opportunity of submitting a written or oral defence.

#### ARTICLE 12

1. The parties shall be required to give all details and information regarding the dispute which the arbitrators may desire, to appear in person if so requested, and to act in accordance with any written or oral instructions given by the arbitrators. Should a party to a dispute fail to comply with these requirements, the arbitrators may when delivering their award draw such conclusions from this as they may consider justified.
2. The arbitrators may order the parties to call witnesses; the arbitrators themselves may also call witnesses. All oral examinations shall take place and all oral statements shall be made at the hearing, except in special cases at the discretion of the arbitrators. The parties must be given sufficient time to inspect all written statements and other documents on which the arbitrators will rely in

making their award.

## **COUNTERCLAIM**

### ARTICLE 13

1. Together with his written defence or (if no written defence has been lodged) at the first hearing, the respondent shall be entitled to bring a counterclaim against the claimant, provided such claim arises from the same contract or transaction which gave rise to the original claim. If the counterclaim is brought at the first hearing, a new date for the oral hearing of the dispute shall be appointed if so requested by the claimant.
2. If a counterclaim arises from another contract or transaction (but is subject to these Arbitration Rules) a separate request for arbitration must be submitted, which may be accompanied by an application, giving reasons, for this claim to be put before the arbitrators hearing the original claim.
3. In the case referred to in par. 1 of this article, or if the application mentioned in par. 2 of this article is not granted, the arbitrators shall decide whether the original claim and the counterclaim shall be decided together or separately.
4. The respondent shall be entitled, furthermore, to bring a claim as referred to in par. 1 of this article if the claimant withdraws his claim before the respondent has had the opportunity of submitting a written defence. In that case the counterclaim must be lodged within 14 calendar days after the date on which the registered letter from the President or the Secretary, informing the respondent of the withdrawal, has been sent.
5. In the case referred to in art. 3, a counterclaim shall be admissible only if this is mentioned in the deed of submission.

## **CHALLENGE OF ARBITRATORS**

### ARTICLE 14

Arbitrators may be challenged on any of the grounds on which pursuant to the law judges may be challenged and, moreover, on the grounds that

1. the arbitrator is employed by or in any way associated with the business of any of his fellow-arbitrators or of one of the parties to the dispute;
2. the arbitrator is a relation by blood or by marriage



up to four times removed, of any of the other arbitrators;

3. an arbitration is pending between the arbitrator or his wife or their relations by blood or by marriage, in the direct line, and one of the parties;

all the above irrespective of whether such grounds existed before or have arisen since the appointment of the arbitrators.

#### ARTICLE 15

1. Objections challenging arbitrators must be made within 8 calendar days after the date on which notice of the appointment, as referred to in art. 7, par. 4, or (in case of change of arbitrators) in art. 16, par. 3, has been sent.
2. Notice of challenge of arbitrators must be given to the President by registered letter, such letter to state all objections and all grounds of the challenge; failure to do so will result in the forfeiture of all rights.
3. However, if any ground for a challenge comes to the notice of the party concerned only on a later date, he may still send his notice of challenge within 3 working days after expiry of the period mentioned in par. 1 of this article.
4. The President shall send copies of the aforesaid letter to the challenged arbitrator(s) and to the other party to the dispute. If the challenge is not immediately accepted by the challenged arbitrator(s) and by the other party, the persons who pursuant to art. 7 (in case of appeal, art.21) have appointed the arbitrators shall decide the matter and send their decision by registered letter to the arbitrators and to the parties.
5. If the challenge is neither withdrawn nor accepted within 8 calendar days after the date on which the letter referred to in the second sentence of par. 4 of this article has been sent, the matter shall be decided by the District Court (ArrondissementsRechtbank) in Rotterdam at the request of the challenging party. Such request must be filed within 8 calendar days after the date on which the President has informed the challenging party by registered letter that the challenge has not been accepted, failing which the challenge is deemed to have been withdrawn.

#### **REPLACEMENT OF ARBITRATORS**

#### ARTICLE 16

1. If, for any reason whatsoever, one or more of the arbitrators appointed cannot, or cannot any longer, act as such, the persons who pursuant to art. 7 (in case of

appeal, art. 21) have appointed them (if necessary, acting together with substitutes to be nominated by the President) shall appoint other arbitrators in accordance with art. 7 to replace them.

2. If in consequence of the withdrawal of one or more of the arbitrators the mandate of the other arbitrator(s) should be terminated, the latter shall be considered to have been re-appointed.
3. The President shall immediately give notice of the replacement by registered post to the parties and by ordinary post to the other arbitrator(s).
4. If the replacement of any arbitrator occurs after the first hearing, the case must be tried again ab initio, unless the parties and the arbitrators unanimously agree to the hearing of the dispute being continued.

### **WITHDRAWAL OF ARBITRATION**

#### ARTICLE 17

1. A request for arbitration may be withdrawn by the claimant by registered letter or by telex, telefax, telegram or e-mail addressed to the President. If, however, the respondent has already submitted a written defence, or has given his defence orally at the hearing, withdrawal shall be permitted only if the respondent declares that he agrees thereto.
2. The President shall immediately by registered post inform the respondent of the withdrawal.
3. If the arbitration is withdrawn before the arbitrators have started work on the case, the claimant must pay to the N.Z.V. the administration charges specified in art. 27 plus charges for postage, telephone, etc. If the arbitrators have already started work on the case, but no hearing has yet taken place, the claimant must further pay to the arbitrators one half of the arbitration fee plus all disbursements to which they would have been entitled under art. 27.
4. If the arbitration is withdrawn during or after the hearing, or after the arbitrators have already inspected to goods, the full arbitration costs shall be due.
5. Withdrawal by the claimant shall not affect the power of the arbitrators to continue to deal with any counterclaim.

### **AWARD**

#### ARTICLE 18

1. The arbitrators shall render their award in fairness as good men and true. They shall decide by a majority of votes; if their decision is not unanimous this shall not be stated in or under their award.
2. Their mandate shall remain in force until and including the date when their final award has been filed at the Registry of the District Court mentioned in art. 9, par. 2.

#### ARTICLE 19

1. The arbitrators shall record their decision in an award to be executed in at least 5 copies, at least four of which to be signed by them, in accordance with Section 1057 of the Wetboek van Burgerlijke Rechtsvordering (Code of Civil Procedure).
2. The Chairman of the arbitrators shall send these copies, together with the letter of appointment duly signed for acceptance by the arbitrators, to the Secretary who will then forward one signed copy by registered letter to each of the parties (also informing them of the manner and time limits in which an appeal against the decision may be lodged). The Secretary shall also file one signed copy (together with the letter of appointment signed for acceptance by the arbitrators), on behalf of the arbitrators, at the Registry of the District Court in the district in which the award was issued. One signed copy shall be filed in the archives of the N.Z.V. and the Secretary shall retain one copy for possible publication.
3. If a deed of submission as referred to in art. 3 has been drawn up that document shall be filed at the above-mentioned Registry at the same time.
4. The parties agree in advance that the award may be disclosed to third parties by or on instruction of the N.V.Z., provided that such disclosure shall not include disclosure of the identity of the parties.

#### **APPEAL**

#### ARTICLE 20

1. Either party may appeal against the award by notice to be given by letter or by telegram, telefax, telex or e-mail to the President or the Secretary - this on penalty of forfeiture of the right to appeal - within 14 calendar days after the date when the Secretary's registered letter referred to in art. 19, par. 2, was sent, proof of which date shall be the certificate of posting issued by the post office.
2. Should either of the parties to the dispute have no residence or business address in The Netherlands, the

period mentioned in par. 1 of this article shall be extended to 28 calendar days.

3. The other party may, in his turn, lodge a counter-appeal, even after the aforesaid time-limit has expired, but not later than at the first sitting of the appeal arbitrators.
4. If the appeal is withdrawn before the first sitting of the appeal arbitrators, the right to lodge a counter-appeal shall nevertheless remain. In this case the counter-appeal must be lodged within 14 calendar days after the date on which the registered letter from the President, announcing the withdrawal of the appeal, must be considered to have arrived at the post office of the residence or business address of the other party.
5. No appeal shall be allowed from an award to the extent that this concerns an assessment of the quality of goods.

#### ARTICLE 21

The appointment of the Appeal Arbitration Board shall be made in accordance with the provisions of art. 7.

#### ARTICLE 22

1. Within a period to be announced by the Chairman of the arbitrators by registered letter, the appellant must submit a written notice of appeal, in sextuplicate, containing all - argued - objections to the award in first instance, together with documentary evidence (if any), also in sextuplicate.  
If the aforesaid period is exceeded the right of appeal shall be forfeited, save if that period is extended by the arbitrators.
2. Articles 9, 10, 11, 12 and 14-19 inclusive shall apply also to the arbitration on appeal.
3. On appeal no new claim may be submitted except claims for interest, rent, damages and/or expenses which have become due or have been incurred after the original claim was lodged.
4. A new defence may be submitted, provided that it is not inconsistent with the position taken in first instance, unless such defence on appeal is a consequence of facts which have become known after the case had been dealt with in first instance.

#### **COSTS OF ARBITRATION**

#### ARTICLE 23

1. The party lodging a request for arbitration or making a counterclaim, or lodging an appeal or counter-appeal, as the case may be, must pay the requisite deposit to the Treasurer within 10 working days. This period begins on the date on which the registered letter from the President, stating the amount to be deposited, has been sent. Failing payment of this deposit, the President may consider the claim, the counterclaim, the appeal and/or the counter-appeal as null and void.
2. The provisions of par. 1 of this article shall apply accordingly when the President has given notice that the deposit must be supplemented.
3. The Chairman of the Arbitrators shall inform the President when a counterclaim or accessory appeal has been lodged.

#### ARTICLE 24

1. As a rule the costs of arbitration shall be awarded against the losing party. However, the arbitrators may order the costs to be shared by the parties, e.g. in a case where the parties have each lost in part.
2. If prior to the first sitting of the arbitrators in first instance, the losing party had offered the claimant a settlement in an amount equal to or higher than the amount awarded, increased by the amount which under art. 17 would be due for withdrawal of the arbitration, but that offer was not accepted, the other party shall be ordered to pay the costs of arbitration.

#### ARTICLE 25

1. In case of appeal, the costs of both instances shall as a rule be awarded against the losing party. The second sentence of par. 1 of art. 24 and also par. 2 of art. 24 shall apply accordingly.
2. If the quashing or alteration of the award is to some extent a consequence of the fact that in first instance one of the parties has failed to substantiate or elucidate his claim or defence sufficiently, the appeal-arbitrators may order that party to pay all or part of the costs of the appeal.

#### ARTICLE 26

1. In their award the arbitrators shall determine the costs of the arbitration, inclusive of the charges for filing the award at the District Court Registry. If the arbitrators think fit to do so, they may include in said costs the travelling and other expenses necessarily incurred by the successful party, as well as the costs of legal assistance and/or witnesses and summoning the latter, all such costs to be assessed by the arbitrators.

2. Arbitration costs due to the N.Z.V. and the arbitrators shall be recovered, as fully as possible, from the deposit paid for that purpose by the claimant or appellant. If, or to such extent as, the costs of arbitration are not awarded against the party who has paid the deposit, the other party shall be ordered in the award to pay such costs to the party who has paid the deposit.
3. The party who pursuant to par. 1 of this article is to pay costs to the other party shall be ordered in the award to pay such costs to the other party.

#### ARTICLE 27

1. Except as provided in art. 8 with regard to arbitration by a single arbitrator, the costs to be paid to the N.Z.V. are the following:
  - (1) the fee due to the arbitrator(s), in the amount of € 250,-- each;
  - (2) any expenses incurred by the arbitrators in postage, telephone calls, legal assistance, registrar's services etc.;
  - (3) administration charges of a minimum of € 175,--;
  - (4) costs of filing at the District Court Registry, etc.;
2. In case of appeal, the fee of each of the arbitrators shall be € 400,--, and the provisions under (2), (3) and (4) of par. 1 of this article shall apply accordingly.
3. If at the time when the dispute arose neither party was a member of the N.Z.V., the charges mentioned under (1) and (3) in par. 1 of this article and the charges mentioned in par. 2 of this article shall be increased by 50%, with the exception of the costs of postage, telephone, etc., which remain unchanged.
4. The arbitrators have the power to increase their fees, as determined in these Rules, to a maximum of four times the amounts specified, if they consider there are grounds for doing so in view of the magnitude of the case to be adjudicated upon and the time they have spent on it.
5. The Board of the N.Z.V. has the power to change the amounts stated in this article and to appoint the date when such change comes into force. Any and all changes determined by the Board of the N.Z.V. shall be announced to the members by circular letter, in such a way that there shall be an interval of at least one full calendar month between the date of despatch of the circular and the date when the change comes into force.

#### **GENERAL PROVISIONS**

#### ARTICLE 28

1. Working days shall be all calendar days except Saturdays, Sundays and public holidays applicable to any person involved in arbitration under these Rules.
2. The duties allocated in these Rules to the President shall be carried out by his substitute if the President is prevented from doing so.
3. The Board of the N.Z.V. has the power to nominate one or more of its members who shall be authorized to carry out all duties allocated in these Rules to the President. If the Board exercises this power, the members shall be informed thereof by circular letter.
4. In the event of any difference of opinion regarding the interpretation of any translation of these Rules, only the Dutch text shall be binding.
5. These Rules have been filed at the Registry of the District Courts in Amsterdam and Rotterdam and at the Chamber of Commerce in The Hague.

#### ARTICLE 29

Neither the N.Z.V., nor any member of its Board personally, nor the Secretary nor any arbitrator can be held liable for any act or omission with regard to an arbitration governed by these Rules.

#### **TRANSITIONAL PROVISION**

#### ARTICLE 30

These amended Rules came into force on 1st July 2005 and apply to disputes arising from transactions, commitments or agreements effected or entered into on or after 1st July 2005.

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