

**General Terms of Business (2010)**  
**for cheese trading and services and**  
**the Dispute Settlement Procedure and**  
**Arbitration Regulations**  
**of the**  
**“Nederlandse Zuivelbeurs” (Dutch Dairy**  
**Exchange) Foundation**

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**GENERAL TERMS OF BUSINESS (2010)**  
**for cheese trading and services and**  
**the Dispute Settlement Procedure and Arbitration Regulations of the**  
**“Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation**  
**in The Hague**

These General Terms of Business are made up of the following sections:

- I the Terms of Business, as applicable between affiliated companies;
- II the Additional Terms and Conditions for third parties, as applicable to agreements between an affiliated company and a non-affiliated company;
- III the Dispute Settlement Procedure and Arbitration Regulations, comprising
  - A: an amicable settlement phase; and
  - B: the arbitration procedure.

These terms of business can be cited as the “General Terms of Business of the Dutch Dairy Exchange Foundation”.

**I THE TERMS OF BUSINESS**

as applicable between affiliated companies of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation.

**Chapter 1 General**

(Provisions applicable to purchases and services)

**APPLICABILITY**

**Article 1.**

1. These Terms of Business will apply to all offers issued by affiliated companies to other affiliated companies, as well as to all agreements entered into between affiliated companies, relating to cheese in the widest sense of the word.
2. If the cheese is not delivered in its entirety but rather as partial deliveries at different times, each such partial delivery will be considered an independent delivery for the application of these Terms of Business.

**DEFINITIONS**

**Article 2.**

These terms of business use the following definitions:

“cheese”	the cheese product – both packaged and unpackaged – as currently defined in Article 1, section e (and f) of the Agricultural Quality Decree for Dairy Products (7 July 1998, Law Gazette no. 453), as well as products analogous to cheese products, which will in all cases include cheese-like products in which milk fat has been replaced by vegetable fats.
“storage”	storing of cheese for third parties in the cheese warehouse, maintaining cheese stock in the cheese warehouse, treating and/or processing cheese in the cheese warehouse and/or related locations and the release of cheese from the cheese warehouse. This also includes a sales transaction as part of which parties simultaneously have agreed that the same batch of cheese will be sold back and delivered to the selling party by the buying party in its unprocessed state.
“affiliated company” or “affiliated companies”	a (legal) person that trades in cheese, dairy products or related goods and makes use of the Dairy Exchange organised by the Foundation, as well as its Terms of Business. Affiliated companies pay a membership fee set by the board of the Foundation.
“packaging”	banderoling, labelling, application of transparent labels, cutting and portioning of cheese and related actions for the checking, weighing, and packing of cheese.

“paraffining”	application of a protective layer or coating directly on the cheese.
“parties”	selling party/service provider and buying party/client jointly.
“buying party”	the party buying cheese from the selling party
“selling party”	the party selling cheese to the buying party
“client”	the party contracting the service provider to provide services
“service provider”	the party contracted by the client to provide services
“selling party/service provider”	selling party and/or service provider as the occasion arises
“buying party/client”	buying party and/or client as the occasion arises
“cheese warehouse”	every space used for the storage of cheese and/or the processing of cheese.
“Incoterms”	the most recent Incoterms of the International Chamber of Commerce as they are at the time the agreement is entered into.
“barrel”	barrel is understood to refer to containers of cheese and cheese products, including: wheeled containers, pallets, boards, transport boxes, CBL crates, and foil crates.
“trade”	buying and selling of cheese.
“services”	storage and/or packaging and/or paraffining.
“barrel proprietor”	the party giving the barrel on loan to the barrel user
“barrel user”	the party that has the barrel on loan from the barrel proprietor

## DEVIATING TERMS OF BUSINESS

### **Article 3.**

Terms and conditions or stipulations that deviate from these Terms of Business and that are communicated by an affiliated company in purchase orders or sales orders, service contracts and/or letters, or other means of correspondence, or communicated verbally, will only be effective if these have been explicitly accepted in writing.

## OFFERS

### **Article 4.**

Offers are free of obligations, unless stated otherwise in writing.

## GENERAL DELIVERY

### **Article 5.**

- 1 Unless agreed otherwise, delivery of ex-works will be as per the Incoterms. If the buying party/client does not make any vehicles available on the day of delivery, in case of ex-works delivery, or otherwise makes delivery impossible, all damages and costs incurred by the selling party/service provider ensuing directly from such negligence will fall to the buying party/client.
- 2 The Incoterms applicable at the time the agreement is entered into will lead to the interpretation of the transportation and delivery terms used in offers, purchase agreements and/or purchase confirmations, storage agreements and/or storage confirmations, insofar as these are not deviated from in these documents and/or these terms and conditions.
- 3 If carriage-paid delivery is agreed upon, delivery will be on the basis of carriage and insurance paid up to (CIP in the Incoterms) the agreed destination, and the following will also apply:
  - a. If the selling party/service provider fails to deliver on the day of delivery, all damages and costs for the buying party/client ensuing directly from this negligence will fall to the selling party/service provider.
  - b. Possible additional costs for delivery to different warehouses by the buying party/client will fall to the buying party/client.
- 4 If delivery is to be on the demand of the buying party/client, the buying party/client will ensure that dispatch instructions will be issued to the selling party/service provider in time before termination of the agreed term so that the selling party/service provider can deliver within that term.
- 5 In case an agreed delivery method is lacking or unclear, the selling party/service provider will be entitled to deliver in a way that he deems fit.
- 6 Regardless of what has been agreed upon by selling party and buying party or client and service provider in relation to payment terms, selling party/service provider are entitled to require that the buying party/client provide sufficient surety for payment prior to delivery. If this

surety for payment is not provided within the reasonable term set by the selling party/service provider or not deemed sufficient by the selling party/service provider, the selling party/service provider will be entitled to suspend (further) compliance with its obligations under the agreement. Selling party/service provider will, in that case, in no way be liable for possible damages suffered by the buying party/client ensuing from this suspension of compliance.

- 7 Selling party/service provider agrees to inform the buying party/client about the date of production of the cheese, if the buying party/client requests such information.

#### LOADING AND UNLOADING INSTRUCTIONS

##### **Article 6.**

- 1 The buying party/client must ensure that he issues clear and timely instructions regarding the transportation and loading and unloading procedure.
- 2 If a load is made up of several batches of cheese when cheese is delivered for storage, the buying party/client must indicate clearly and in a timely manner which cheese belongs to which of the separate batches of cheese.
- 3 If the buying party/client fails to provide the instructions referred to in paragraph 1 and 2 on time, any ensuing consequences will fall to the buying party/client.
- 4 If the loading of cheese by the selling party/service provider happens on the instruction of the buying party/client, the selling party/service provider will not be liable for possible overloading of the transport unit. Selling party/service provider will in that case explicitly be indemnified against overloading by the buying party/client.

#### LOAD HEIGHT

##### **Article 7.**

- 1 Unless delivery on pallets or otherwise is agreed upon, the load height for transport will be subject to the following (maximum) values for cheese between 14 and 28 days old:

<b>TYPE OF CHEESE (semi-manufacture/end product)</b>	<b>LOAD HEIGHT</b>
Gouda* 5 kg	3
Gouda* 10-12 kg	3
Gouda* 17 kg	3
Gouda* cumin	3
Gouda* low salt/fat	3
Maasdammer	3
Amsterdam	3
Bread cheese	3
Light cheese (low sodium level)	3
Proosdij cheese	3
Edam*	3
Boerenkaas* (Farmer's cheese)	3
* For "Gouda" the possible shapes are "flat cylindrical", "block" and "bread". * For "Edam" the possible shapes are "round", "block" and "bread". * For "Boerenkaas" the possible shapes are "flat cylindrical", "block" and "round".	

- 2 For cheese younger than 14 days the maximum load height is 2, regardless the type of cheese.
- 3 For so-called "foil cheese" the maximum load height is 8; and foil cheese must always be transported in a refrigerated unit (temperature between 2-8° Celsius)

#### BARREL DEPOSIT

##### **Article 8.**

- 1 The barrel proprietor guarantees that the barrel that he makes available is in good condition. That means the barrel is clean and free of defects. If the barrel is not in good condition, the barrel user will report that to the barrel proprietor in writing, within two working days.
- 2 The barrel proprietor may charge a returnable deposit for the barrel he loans to the barrel user, unless otherwise agreed upon, which deposit will amount to:

Type of barrel	Deposit amount (per barrel in Euros plus VAT)
Wheeled container	250
Transport box	350
CBL-crate / E2-crate	3.86
Foil crate (complete)	250
partitions foil crate	10
Multiple pallets wood	10
Plastic H1 pallet	56.75
HT pallet	17.50

The deposit is payable along with the purchase or service invoice relating to the delivered goods. Upon returning the barrel in good condition, the barrel proprietor will pay back the deposit to the barrel user. VAT will not be charged on the deposit.

- 3 The barrel user may only use the barrel that was used by the barrel proprietor for the delivery of goods to the buying party/client for the shipment of products of the corresponding selling party/service provider. The barrel user may not make the barrel he has on loan in any way available to others. The barrel user may not change the appearance of the barrel, affix stickers to it, paint the barrel, or otherwise place logos, symbols, or names on the barrel.
- 4 The barrel user is held responsible to ensure that the barrel remains in good condition, i.e.: clean and without defects. If it turns out, after returning it by the barrel user to the barrel proprietor, that the barrel is not in good condition, the barrel user will be liable towards the barrel proprietor for any ensuing costs. The barrel user will also be liable for any damages sustained by the barrel proprietor as a result of the barrel not being returned in good condition.
- 5 The barrel owned by the barrel proprietor will remain the inalienable property of that barrel proprietor. This barrel will be fitted with an identifying mark that stands out as the property of the barrel proprietor. Property rights, ownership, lien or any other right in rem cannot be invoked against the barrel proprietor by anyone under any circumstances.
- 6 The risk of late return of the barrel, loss of the barrel and/or contamination of or damage to the barrel, for whatever reason, will fall to the barrel user. The barrel proprietor will in that case be entitled to retain the deposit paid by the barrel user, albeit without prejudice to the barrel proprietor's further right to claim (additional) damages from the barrel user.

## TERMS OF PAYMENT

### Article 9.

1. All amounts payable by buying party/client to selling party/service provider under any agreement must be paid without delay and without off-setting of outstanding debts on the correspondingly agreed pay-by-date.
2. Storage charges and – if cheese is insured through the cheese storage provider - premiums and costs of insurance will be charged for the agreed period, with parts of that period also considered full periods.
3. Unless agreed otherwise, buying party/client will have a payment term of 28 days after the invoice date for payment into the account. If payment has not been received within abovementioned term, buying party/client will automatically be held in default of exceeding the payment term, without any summons or proof of default being required. Buying party or client will in that case also be liable to pay interest on the outstanding amount at a rate of 1.5% per calendar month after expiry of the payment term. Part of a calendar month will be considered a full calendar month. This interest will be payable without any summons or proof of default being required. Buying party/client will furthermore be held liable to compensate the selling party/service provider for all costs the selling party/service provider has to incur to collect outstanding amounts.
  - a. The following costs will in particular fall to the buying party/client: expenses incurred by solicitors, both judicial and extrajudicial, also insofar as these exceeded amounts wound up by the court, bailiffs' fees, representatives' fees and debt-collection agencies.
  - b. Abovementioned extrajudicial costs incurred by third parties will be limited to 15% of the sum total, with a minimum of € 100.
  - c. Costs for bankruptcy applications and storage charges in case of suspension of supply will also fall to the buying party/client.
  - d. The selling party/service provider is not obliged to prove that claimed collection costs were actually incurred.

4. Without prejudice to any other declaration by the buying party/client relating to the making of payments and without prejudice to the administrative processing thereof by the selling party/service provider, payments by the buying party/client will always and exclusively be taken firstly to cover collection fees and interest payable by the buying party/client, secondly to cover claims of the selling party/service provider relating to articles that the buying party/client has sold on and delivered to third parties and finally to cover the oldest unpaid invoices of the selling party/service provider.
5. All claims of the selling party/service provider against the buying party/client will be payable without delay if the buying party/client is declared bankrupt, applies for a moratorium, is declared subject to the Debt Restructuring for Natural Persons Act, the buying party/client's assets are seized, and this seizure cannot be raised within 30 days, or buying party/client otherwise loses the disposal of (part of) its assets, if buying party/client offers its creditors an arrangement, if buying party/client defaults on its compliance with any obligations towards the selling party/service provider, or ceases its operations. The above will be correspondingly applicable in case the company is run through a legal person and this legal person goes into liquidation.
6. All items delivered by the selling party will remain its property – also after and despite processing or treatment – until the buying party has made all payments relating to the items under the agreement, including any work agreed upon under such agreements and all claims for shortcomings in compliance with such agreements, including all incurred collection expenses and payable interest.
7. Buying party agrees to establish a tacit right of lien on the deliverables for the selling party upon first request, insofar as possible by making transfer of property of delivered goods subject to conditions for all existing and future claims of the selling party against the buying party/client, including all collection expenses and interest; the buying party will not be permitted to establish a tacit right of lien on the deliverables for a third party.
8. The buying party will receive the items that are the property of the selling party on loan and agrees to make these available to the selling party upon first request to that effect – when buying party is in default – and to access his premises where these items are held, so that selling party can reclaim these items upon termination of the loan agreement, which can be done with immediate effect.
9. The buying party is not authorised to pledge items belonging to the selling party to third parties (and neither is it authorised to establish a pawn or tacit right of lien on these items for a third party) or transfer the property thereof to third parties, with the exception of sales and delivery to third parties as part of the normal exercise of its business.
10. By way of collateral for payment of everything that buying party or client owes or will owe to selling party or service provider under any agreement, selling party or service provider will have a lien on all monies and cheeses of the buying party/client that the selling party/client has in its possession at any time.

## ORIGIN OF THE CHEESE

### **Article 10**

1. The selling party/service provider agrees to tell the buying party/client in which region the cheese was produced.
2. Where the naming of the cheese products is concerned, the nomenclature of the scheme referred to in Article 17 paragraph 2 is used.
3. Selling party/service provider furthermore agrees to comply with all valid statutory regulations and specifications.

## FORCE MAJEURE

### **Article 11**

1. In these Terms of Business, force majeure is defined as it is defined in the law of the Netherlands. Force majeure relieves the selling party/service provider and the buying party/client of the delivery obligation and purchase obligation respectively, without the selling party/service provider and buying party/client being able to make any statutory claims for damages respectively.
2. Obstruction of traffic will only relieve the selling party/service provider of its obligations to deliver on time, with possible ensuing additional costs and transport risks due to the buying party/client still requiring timely delivery falling to the buying party/client.

3. In case of temporary force majeure, selling party/service provider will only be relieved of its obligations under the stipulation of paragraph 1 if this temporary force majeure has lasted more than three months.

## DISPUTES

### **Article 12**

- 1 All disputes arising between buying party/client and selling party/service provider – including their successors or beneficiaries - both legal and factual disputes, of any nature, prompted by or related to an agreement, to which these Terms of Business apply, or further or related agreements, will be submitted to arbitrators, excluding the ordinary judiciary.
- 2 Selling party/service provider can, however, contrary to the stipulation from the previous paragraph, submit a dispute or claim as referred to in paragraph 1 to the judgement of the appropriately competent cantonal court, if the dispute or claim in question does not amount to more than the amount referred to in Article 93 of the Civil Legal Code.
- 3 Arbitration as referred to in paragraph 1 will be subject to the dispute settlement procedure as it is valid at the moment of submission of the dispute, as well as the arbitration regulations of the “Nederlandse Zuivelbeurs” Foundations, based in The Hague.
- 4 The stipulations from paragraph 1 and 2 of this article will be without prejudice to the buying party’s and selling party’s, or the client’s and service provider’s, right to try to come to an amicable settlement of the dispute as per the articles of the Dispute settlement procedure upon commencement of the arbitration.
- 5 Present disputes clause does not exclude the party’s right to turn to the judge’s hearing applications for interim relief for urgent matters and to proceed to the taking of attachment measures and the means of keeping up such measures.
- 6 If parties have entered into several agreements under this terms of business, and one of the parties fails to comply with its obligations towards the other or fails to pay the damages defined in substitute for such obligations, the latter party will, providing liability in the shortcomings has been ascertained by the arbitrators, be entitled to claim surety, possibly to be defined by arbitrators, for the correct compliance with its obligations under agreements.
- 7 If, despite summons to that effect, surety is not provided for/by the party in question, the other party reserves the right to terminate all current agreements. In that case, the terminating party agrees to notify the counterparty of its intention to exercise this right by way of a notice sent by registered mail and at the soonest possible opportunity.

## APPLICABLE LAW

### **Article 13**

All agreements, to which these terms and conditions apply, partially or in full, are governed by Dutch Law. The provisions of the Vienna Sales Convention are excluded.

## FINAL CLAUSES

### **Article 14**

1. Whenever these Terms of Business refer to working days, this does not include Saturdays, Sundays and official public holidays as per the General Extension of Time Limits Act.
2. If any stipulations from these general terms and conditions, or any part of an agreement entered into under these general terms and conditions are null or nullified, the other stipulations of these general terms and conditions, or other parts of the agreements, will remain fully intact. Parties will in that case come to an arrangement regarding the null or nullified stipulations and/or the null or nullified part of the agreement that resembles the original purport of the parties when they entered into the agreement, as well as related general terms of conditions, as closely as possible.

## Chapter 2 Trade

### PURCHASE UPON INSPECTION

#### **Article 15.**

1. In case of "purchase upon inspection" the buying party has the right to inspect the cheese prior to acceptance, or to have a third party inspect the cheese. This inspection has to be performed within a certain term, i.e. no later than on the 2<sup>nd</sup> working day after the day on which the selling party has notified the buying party that the items can be "inspected". This is normally the 2<sup>nd</sup> working day after the "purchase upon inspection" is agreed, unless a longer term is agreed.
2. If the inspection under the first paragraph finds the items not to meet with the buying party's expectations, the agreement will automatically be considered dissolved.
3. If the buying party or his representative fail to have the cheese inspected within the set term, the cheese will be considered approved; possible subsequent comments cannot give grounds for dissolution of the agreement or for damages, except in cases of hidden shortcomings.
4. The notifications that the items have been approved or not will be issued to the selling party or its representative on the day of inspection.

### WEIGHT

#### **Article 16.**

1. The weight of the delivery, as determined by the selling party, will only be binding for the buying party if buying parties does not detect any deviations from that weight directly upon receipt of the delivery.
2. The buying party agrees to report the weight to the selling party on the same day whenever possible, yet no later than 2 working days after delivery, and confirm this in writing. The selling party agrees to respond within 2 working days and confirm its response in writing.

### AGE OF THE CHEESE

#### **Article 17.**

1. In case of delivery of aged cheese, the cheese must be of the age as agreed in the purchase or sale respectively, or on the basis of which the services are provided.
2.
  - a. May cheese (a.k.a. grass cheese) is understood to mean cheese produced in the months up to May.
  - b. Summer cheese is understood to mean cheese produced in the months of June, July and August.
  - c. September cheese is understood to mean cheese produced in the period from 1 September to 15 October.

### LEEWAY IN DELIVERABLE QUANTITY

#### **Article 18.**

1. If a certain weight has been agreed for the purchase and sale, the delivered batch can weigh slightly more or less:

up to	1,000 kg	5%
up to	5,000 kg	4%
up to	10,000 kg	2%
over	10,000 kg	2% to a maximum of 1,000 kg.
2. Claims related to deviations from the purchase weight must be made to the counterparty in writing within 2 working days after receipt of the shipment in question.
3. Without prejudice to the previous paragraph, weight deviations of natural cheese are settled as per the following norms:
  - natural cheese aged between 14 days and 35 days may have a weight deviation of no more than 0.2% without costs being amended; if the deviation is more than 0.2%, costs can be adjusted for every 0.1% of deviation.
  - natural cheese aged between 35 days and 12 weeks may have a weight deviation of no more than 0.1% without costs being amended; if the deviation is more than 0.1%, costs can be adjusted for every 0.05% of deviation.
  - natural cheese aged 12 weeks and over may have a weight deviation of no more than 0.05% without costs being amended; if the deviation is more than 0.05%, costs can be adjusted for every 0.05% of deviation.

## DELIVERY FROM VARIOUS LOCATIONS

### **Article 19.**

The buying party agrees to accept deliveries from different warehouses.

## PURCHASE PRICE, PAYMENT

### **Article 20.**

1. The price of cheese is set based on weight and applies per kilogram on a net ex-warehouse (the selling party's warehouse) basis, in Euros, plus VAT, unless agreed otherwise.
2. Selling party will send its invoice within 5 working days after delivery.

## CLAIMS RELATING TO SHORTCOMINGS

### **Article 21.**

1. When delivered cheese does not comply with the agreement because the cheese displays shortcomings, claims relating to that will only be taken up if these were submitted in writing within 5 working days after receipt of the cheese and for soft and fresh cheese this term will be 2 working days.
2. When shortcomings only emerge a while after receipt, buying party can only claim the delivered cheese did not meet the agreed quality if he has notified the selling party within the following terms after detecting the shortcomings, or within which he could reasonably be expected to have detected the shortcoming:
  - a. in case of shortcomings in the cheese's rind, claims must be submitted to the selling party by the buying party in writing within 10 working days, with such claims only taken up before the cheese has reached the age of 42 days;
  - b. in cases of shortcomings other than the previously cited shortcomings, claims relating to such hidden shortcomings of both individual cheese and or a whole variety must be submitted to the selling party in writing with 10 days after detection of the shortcoming.
3. The selling party is obliged to inform the buying party, in writing, of its position relating to claims within 10 working days after receipt of these claims.
4. If a dispute which has given rise to a claim, as referred to under paragraphs 1 or 2 of this article, is not settled between the parties within a 6-week term after the claim was submitted or after the selling party has informed the buying party of its position on the matter in the way as intended by paragraph 3, the complainant will request arbitration within a term of 6 weeks under penalty of lapsing of the claim, and do so in the way as described in Article 16 of the arbitration regulations.
5. The assessment of whether and when the buying party could reasonably have been expected to detect a shortcoming in the cheese (paragraph 2) will consider the buying party's obligation to comply with standards of inspection and care as set by practice and statutory regulations. Storage of cheese must happen in an air-conditioned warehouse, with periodical inspections as necessary for the different kinds of cheeses and recorded in the warehouse log for the buying party. For naturally matured cheese, unpackaged, the air-conditioning must be as follows: maximum 16° Celsius, unless agreed otherwise. For all packaged cheese, including foil cheese, air conditioning must be at 1-7° Celsius. And there is also the requirement that the buying party is to ensure that the original packaging must remain undamaged.

## **Article 22.**

- 1 Without prejudice to the right from Article 21, paragraphs 2 through 5, regarding hidden shortcomings, the selling party will cease to be liable for damage as the consequence of a hidden shortcoming when the guarantee period between the delivery date and the disclosure of a shortcoming as listed in the following has expired.

<b>TYPE OF CHEESE (semi-manufacture/end product)</b>	<b>SHORTCOMINGS IN RIND, not detectable at delivery</b>	<b>DAIRY SHORTCOMINGS</b>
	<b>WEEKS OF AGE</b>	<b>WEEKS OF AGE</b>
Gouda* 5 kg	16	52
Gouda* 10-12 kg	16	52
Gouda* 17 kg	16	52
Gouda* cumin	16	52
Gouda* low salt/fat	20	24
Maasdammer	6	8
Amsterdam	5	5
Broodkaas	8	8
Diet cheese (low sodium)	5	5
Proosdij cheese	20	52
Edam*	20	52
Boerenkaas* (Farmer's cheese)	20	52

\* For "Gouda" the possible shapes are "flat cylindrical", "block" and "bread".  
\* For "Edam" the possible shapes are "round", "block" and "bread".  
\* For "Boerenkaas" the possible shapes are "flat cylindrical", "block" and "round".

- 2 Stipulations from the first paragraph do not apply to cases where the buying party makes a reasonable case for the shortcomings originating in the production of cheese; the selling party will, in that case, be held to provide the buying party, upon request, with copies of bacteriological reports, as drawn up during the production process.

## **NEGLIGENCE**

### **Article 23.**

1. The party whose counterparty is considered negligent due to failing to deliver or receive in a timely manner must notify the negligent counterparty in writing no later than on the 2<sup>nd</sup> working days after the termination of the delivery term of the course of action it will follow and have the right to allow the negligent counterparty a forbearance period. This forbearance period will, however, be defined accurately.
2. If the notification referred to in the previous paragraph has not been received by the negligent party within 2 days after the start of the negligence, the forbearance period will tacitly be considered to be 3 working days.
3. If the negligent party fails to comply with its obligations before the end of the forbearance period, the course of action stipulated in the notification referred to in paragraph 1 will become effective, unless parties agree otherwise.

### **Article 24.**

1. If the buying party fails to comply with its obligations, the selling party is entitled to:
  - a. enforce compliance with the agreement, i.e. claim payment of the invoice amount from the buying party, increased by statutorily payable interest, costs and damages, while leaving the items and if necessary store them, with ensuing risk and costs falling to the buying party;
  - b. or proceed to the dissolution of the agreement, i.e. taking back the delivered items and claiming payment of costs, damages and interest.

### **Article 25.**

If the selling party fails to comply with its obligations, the buying party will also have the right to claim compliance with or dissolution of the agreement, as well as claim damages.

## Chapter 3 Services

### SECTION 1 Storage and processing

#### STORAGE

##### **Article 26.**

1. When providing storage services, the service provider will provide the care of a good depositary.
2. The service provider especially pledges to the client that the cheese will be stored in such a way that the quality is guaranteed to a reasonable degree; any damages ensuing from the service provider's non-compliance with this stipulation can be claimed by the client, insofar as that compliance can be attributed to the service provider or its buyer.

#### CONDITIONS FOR STORAGE

##### **Article 27.**

All storage and/or processing of cheese in the cheese warehouse will be at the expense and risk of the service provider. Service provider must have sufficient insurance for all risk affecting the stored cheese and/or cheese submitted for processing during the term of the agreement.

#### START AND END OF CHEESE STORAGE

##### **Article 28.**

1. Storage and/or processing of cheese by the service provider will be considered to have commenced:
  - a. when cheese is unloaded by staff of the service provider when received: as soon as said staff starts unloading;
  - b. when cheese is not unloaded by staff of the service provider when received: as soon as the staff taking care of unloading the cheese has placed the first package of the shipment in the cheese storage facility.
2. Storage and/or processing of cheese by the service provider will be considered to have ended:
  - a. when cheese is loaded by staff of the service provider when received: as soon as said staff has placed a package of the batch in question in the vehicle, or somewhere else for shipment;
  - b. when cheese is not loaded by staff of the service provider when received: as soon as the staff taking care of loading the cheese, starts taking out packages of cheese.
3. Storage charges and additional costs will be payable to the service provider for the full period during which space has been made available for the cheese of the client. The date of receipt and dispatching of the cheese are included in the period for storage charge calculation.

#### DESCRIPTION OF THE CHEESE

##### **Article 29.**

1. Upon entering into a service agreement the client must submit a sufficiently detailed written description of the cheese to the service provider (or have a third party submit this description), stating the different types, qualities, weights, values, quantities, as well as all other specifics that the service provider must be aware of for the proper execution of the storage agreement.
2. If the service provider accepts cheese for storage for which the full description with indication of type, quality, nature, or characteristics has not been provided to the client, the service provider will not be considered to have cognizance of these specifics only because he has accepted the cheese. The same applies if the client has not provided the service provider with the information that is reasonably considered necessary to enable proper storage.

#### RECEIPT

##### **Article 30.**

1. The client will ensure that the supplied cheese is delivered to the cheese storage facility by him, or on his behalf, and free of charge.

2. Service provider will only conduct an entry inspection of the cheese offered to him for storage and/or processing to check the number of packages, cheeses, weight, and visible features relating to nature and type, which check will be recorded by the service provider in writing, unless agreed otherwise between service provider and client. Service provider agrees to notify the client without delay, yet no later than 2 working days after delivery, of any deviations he has detected in relation to the delivery note. The financial settlement of the agreement between the service provider and the client will be based on the weight as stated on the delivery note, unless the weight as measured by the service provider deviates by over 0.1% (for which he is to provide sound proof), in which case the weight as measured by the service provider will be used for the financial settlement.
3. Service provider will not be obliged to accept cheese of which the nature, type, quality, weight, quantity, packaging and/or value visibly deviate from the original description or not comply with the requirements that can be set for it. The assessment thereof will be made by the service provider, using standards of reasonableness and fairness.
4. If the service provider agrees to store and/or process such cheese anyway, all necessary additional work for the preparation, cleaning or adjusting of allocated spaces will be taken care of by, or under the supervision of, the service provider, with ensuing costs falling to the client.
5. Service provider will provide the client with a confirmation of receipt upon receipt of the cheese. Barring other conclusive evidence, this confirmation of receipt is the proof that the cheese stated on the confirmation has been received for storage and/or processing by the service provider on the account of the client.

#### SPECIAL CHEESE STORAGE

##### **Article 31.**

1. If client has not provided any written instructions accompanying the cheese when delivering the cheese for storage and/or processing to the service provider, the service provider will store and/or process this cheese as he sees fit and adhere to methods that are generally accepted in the sector.
2. If the client deems it necessary to have the cheese stored in a special way, the client will inform the service provider of that on time and in writing, in order to give the service provider the opportunity to take the necessary preparatory measures and, if such notification is not given, service provider will not be liable for losses and/or damage, no matter how these were caused, during the storage of the cheese in question.
3. If the client deems it necessary to have the cheese stored in a special way by the service provider or such special storage is necessitated by the nature of the cheese, all costs related to such special storage will fall to the client.

#### REJECTION OF CHEESE FOR STORAGE

##### **Article 32.**

1. Service provider reserves the right to reject cheese that is offered for storage and/or processing. Service provider will base such a rejection on an assessment based on standards of reasonableness and fairness.
2. Cheese will in any case be rejected when:
  - a. the cheese does not comply with the conditions and regulations as described in these Terms of Business;
  - b. the cheese can potentially be harmful to and/or damage other cheeses in storage;
  - c. the cheese is not found to be in order after a sensory inspection;
  - d. the origin of the cheese cannot be stated and proven upon request to that effect.

#### BUSINESS HOURS

##### **Article 33.**

1. Unless agreed otherwise in writing, all activities to be carried out by the service provider on or in relation to the cheese will be carried out during regular business hours, as stipulated in the normal working hours in the Collective Labour Agreement for the sector.
2. If the client requires activities to be carried out outside regular business hours, the service provider is entitled to either comply with or reject such a request. Service provider will, however, only reject a request to that effect on reasonable grounds.
3. Additional costs ensuing from carrying out activities outside the regular business hours referred to in paragraph 1 on the request of the client will fall to the client.

## STORAGE AND TRANSFER OF CHEESE

### **Article 34.**

1. Service provider will at all time be authorised to store the cheese in areas of the cheese storage facility as he can make available. The basic principle here is that the area in question is to be suitable for the objective that parties have agreed in the storage agreement, and meets statutory requirements.
2. Unless parties agree otherwise in writing, the service provider reserves the right to at any time transfer the cheese offered to him for storage to another cheese storage facility, providing this facility is suitable for storage of the cheese in question. Service provider will notify the client of such transfers and whenever his cheese is held elsewhere, stating where the cheese is stored, and without prejudice to the client's right to inspect his cheese at this other location.

## ACCESS

### **Article 35.**

1. Access to the premises and buildings of the cheese storage will only be granted to the client or someone acting on the client's behalf during the regular business hours of the cheese storage facility. When visiting the cheese warehouse, the client or his representative will always first report to the management. The service provider reserves the right to deny the client or his representative entry, providing he has reasonable grounds to do so.
2. All persons who are on the premises of the storage warehouse on behalf of or sent by the client, including staff and third parties, are obliged to comply with locally applicable regulations, instructions, and formalities, as well as to observe instructions of the Customs Agency, Food Inspection Agency, and other authorities relating to hygiene, public order, and safety.

## DELAYS

### **Article 36.**

1. Service provider will not be liable for delay, loss of time, costs or damage, of any nature, suffered by any party, as a result of the loading/unloading bays being inaccessible, unusable, or occupied, unless a space was reserved beforehand.
2. If vehicles fail to arrive or cannot be dealt with at the agreed time, or cannot get to their loading/unloading bay, for whatever reason, the service provider will, providing he is not to blame, be entitled to compensation of unnecessary costs, loss of time and/or other costs of any nature, that ensue from above obstruction, unless it concern a case of force majeure on the part of the client.
3. If the client notifies the service provider of delivery or collection of the cheese to or from the service provider's premises at a specific time, and this requires special assistance by the service provider, the client will, if he fails to deliver or collect the cheese properly and on time, be liable for any ensuing damages and costs, and indemnify the service provider against any claims third parties may lodge against the service provider as a result.

## ENCUMBERED CHEESE

### **Article 37.**

1. Service provider will never be held to accept cheese that is encumbered with transport fees, taxes, rights, penalty fees and/or other levies or costs, of any nature, unless sufficient collateral has been provided by the client or on the client's behalf.
2. All transport fees, taxes, rights, penalty fees and/or other levies or costs, under any denomination, that are payable upon receipt or afterwards, must have been paid in advance by the client. Considering the short-term nature of this advance payment, client will not be reimbursed for interest that accumulates on it.

## LEGISLATION AND REGULATIONS, AND ALSO INSPECTION BY THE AUTHORITIES

### **Article 38.**

1. Storage will be subject to corresponding legislation, regulations, guidelines and/or rules and instructions by the authorities.
2. If such legislation, regulations, guidelines and/or rules and instructions by the authorities are changed after the agreement is entered into, these changes will nevertheless be considered part of the agreement.

- 3 If such changes lead to changes in costs, service provider will be entitled to adjust the price and/or the rate accordingly as of the date such changes take effect.
- 4 If an inspection by the authorities leads to the service provider carrying out additional unforeseen work, the service provider is entitled to charge any related costs to the client, unless these additional costs are the result of negligence that can be attributed to the service provider.

#### RIGHTS, TAXES, AND STATUTORY OBLIGATIONS

##### **Article 39.**

1. If cheese is subject to customs and excise stipulations or other taxes and/or government instructions, the client agrees to provide all information required by the service provider on time, enabling the service provider to file the corresponding documentation.
2. Service provider will not be liable for the correctness of the details stated on the waybill, if these were provided by the client. This also applies to the labels affixed to the cheese. Service provider will only be obliged to check weight, number of packages, and description of the cheese, and the latter only if the description is visible on the outside of the package.
- 4 Service provider will neither be liable for the checking, accepting, storing, completing or issuing of any documentation, nor for the contents of such documentation, unless the service provider is subject to a statutory obligation to that effect, or has explicitly agreed in writing that this is to be part of the agreement as one of the services provided by the service provider.

#### SPECIAL MEASURES

##### **Article 40.**

1. Without prejudice to the stipulations from the previous article, the service provider is entitled to, without delay, take any measures, which will fall to the risk and account of the client, that it considers necessary, including the destruction of the cheese, if there are reasonable and fair grounds to believe that not taking such measures would lead to a danger of loss of or damage to the cheese itself, other cheese, or the cheese warehouse, or of death or physical injury of persons or animals. All related costs, including those incurred by the destruction of the cheese, will fall to the client.
2. Service provider will notify the client of special measures as soon as possible prior to taking such measures, unless this is not possible, in which case the service provider will notify the client as soon as possible after taking the measures.
3. In case the cheese is auctioned by the service provider, the service provider agrees to transfer the proceeds of that auction to the client, after deducting its costs and any claims against the client, and if possible do so within one week after receipt, and in case this is not possible, the amount will be deposited with a bank.

#### RATES AND RATE CHANGES

##### **Article 41.**

1. Unless a price/rate has been specifically agreed, client will owe the prices/rates the service provider normally charges and which are common in the sector.
2. Agreed prices/rates will only apply for the activities of the storage provider covered by the storage agreement. In case activities are not specified, these will only encompass: accepting, handling, and storing, removing cheese.
3. All other costs, such as for transferring, treatment and/or processing, also when not referred to in these general terms and conditions, will be charged for at rates and subject to conditions that are commonly used by the storage provider and in the sector.
4. Client will be notified of changes to prices/rates will be as soon as possible, and will become effective within three months after such notification.

## **SECTION 2 Packaging**

#### PACKAGING

##### **Article 42**

- 1 Service provider will carry out packaging work as per the instructions of the client. If the client does not give any packaging instructions, or these are lacking, the service provider will carry out the packaging work as per statutory regulations and common practice in the sector.

- 2 The client indemnifies the service provider against claims from third parties, under any denomination, unless and insofar as the service provider has fallen short in his compliance with his obligations, and this can be proven.

**Article 43**

- 1 Insofar as the carrying out of packaging work by the service provider should lead to a “new” product coming about, as defined in product liability legislation, the client, and never the service provider, will be considered the producer of that “new” product. The client will affix his own labels or distinguishing mark on the “processed” cheese, or have a third party do so. If the client fails to do so, the service provider is entitled to affix an indication on the cheese, stating the name and address of the client. All costs related to that will fall to the client.
- 2 Client indemnifies the service provider against third-party claims, under any denomination, based on product liability legislation.

**Article 44.**

- 1 Complaints about the soundness of the packaging work carried out by the service provider can only be lodged within 10 working days after detection of unsound packaging services by the client, yet in no case later than 42 days after the time on which the packaging work was carried out.
- 2 Complaints about services are not admissible when the client has proceeded to the processing or transfer while client could have detected claimed unsound packaging service by way of a simple visual inspection.
- 3 Service provider’s liability to pay damages relating to packaging services he has provided will never exceed the amount of the invoice for the provided packaging services to which the claim of unsound packaging relates, without prejudice to the client's possible right to dissolve the service agreement in question for reasons of attributable shortcomings. The service provider is not liable for any consequential damage, under any denomination and suffered under any agreement.

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Accepted during the board meeting of December 4. 2009

Mr J.F.A. Anker (chairman)  
Mr A.M. Hess (secretary)

## **II ADDITIONAL TERMS AND CONDITIONS FOR THIRD PARTIES**

as applicable to an agreement between a company affiliated to the Foundation and a non-affiliated company, hereinafter to be referred to as "third party", for the provision of goods.

### APPLICABILITY OF TERMS AND CONDITIONS FOR THIRD PARTIES

#### **Article 1.**

- 1 All transactions, such as offers, agreements, and the like, of an affiliated company of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation with a third party are subject to the above Terms of Business in Section I, under observance of the changes and additions described in this Section II. Deviations will only be binding when these are agreed in writing between the affiliated company and the third party.
- 2 Third-party Terms of Purchase will only apply when this has been accepted in writing by the affiliated company; in the absence of such acceptance, the third party will be considered to have disclaimed his terms and conditions when having the affiliated company execute the agreement.
- 3 If the third party only acquires knowledge of the fact that the affiliated company exclusively operates under the General Terms of Business when he receives the invoice, the third party will be entitled to let the affiliated company know within three working days after the invoice date that he intends to cancel the agreement, in which case he agrees to ensure that any delivered goods will be returned in good condition within three working days after said notification; failing that, the third party will be deemed to have accepted the applicability of these terms and conditions.

### APPLICABLE LAW AND ARBITRATION FOR AGREEMENTS WITH THIRD PARTIES

#### **Article 2.**

- 1 All transactions are subject to Dutch Law; applicability of the Vienna Sales Convention is excluded.
- 2 When disputes arise between an affiliated company and a third party as a result of an agreement (the execution thereof or of other ensuing agreements) relating to cheese, the stipulations from Article 12 of Section I - the arbitration scheme - will apply, unless the affiliated company prefers to submit the dispute to the regular Court, the legal authority in the third party's place of business, or the Court of The Hague, if the third party is based outside the Netherlands.

### DELIVERY OF CHEESE TO A THIRD PARTY

#### **Article 3.**

If a third party has not responded to the affiliated company in writing by four days after receipt of a written confirmation of sale, or an invoice, the confirmation of sale or invoice will irrevocably be considered to correctly reflect the agreement between the parties.

### LIMITATION OF DAMAGE LIABILITY

#### **Article 4.**

Damages payable by an affiliated company to a third party for non-compliance or incomplete compliance with its obligations under an agreement will never exceed the invoice value of the goods delivered under that same agreement, and at least not exceed the amount covered by the affiliated company's liability insurance. The affiliated company will never be liable for consequential damage suffered by the third party.

### RIGHT TO SUSPENSION/RECLAMATION

#### **Article 5.**

In case of non-payment of an expired invoice, suspension of payment, application for a moratorium, bankruptcy, or liquidation of the third party's operations, the affiliated company will be entitled to, without having to provide proof of default or request the intervention of a court, suspend or cancel the order (or part thereof that is still to be delivered), and to reclaim the goods that have already been delivered but are still its property under Section I, in which cases any amounts claimed by the affiliated company from the third party continue to be payable with immediate effect.

## PROPERTY RIGHTS ON CHEESE FOR EXPORT

### **Article 6.**

Contrary/in addition to the stipulations in Article 9 of Section I, parties can agree to have the legal consequences of a property reservation for a batch of cheese intended for exportation governed by the laws of the destination State, providing the laws of that State contain property rights clauses that are more beneficial to the selling party than the stipulations to that effect in Dutch law, as described in Article 9 of Section I. Any agreement to that effect will only be valid if the batch of cheese is actually imported into the designated destination State.

### **III DISPUTE SETTLEMENT PROCEDURE as well as ARBITRATION REGULATIONS (2010) of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation**

This procedure applies to all disputes between the affiliated companies of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation, of any nature. This procedure also applies if parties that are not affiliated to the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation have declared the general terms of business of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation or this arbitration regulations applicable.

#### **AN AMICABLE SETTLEMENT**

##### **Article 1.**

In case a dispute arises between two affiliated companies of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation, or a dispute to which these arbitration regulations apply, the petitioner can request the intervention of the board of the foundation by way of a request for arbitration, first with an eye to trying to come to amicable settlement of the dispute, and do so by sending a registered, dated letter, in duplicate, to the secretary of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation, stating:

- a. name and address of the counterparty;
- b. a clear brief description of the dispute;
- c. the petitioner's demands (the claim).

##### **Article 1 a**

The board of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation will appoint a board committee from its midst, with none of the appointed members of this committee having any direct or indirect involvement in the dispute.

##### **Article 1 b**

- a. If applicable, the board committee will, as soon as it has received the request, and after the petitioner has deposited funds to cover costs incurred for the calling in of experts, appoint an independent expert, who will be paid for by the petitioner, and assess the quality of the cheese that is the subject of the dispute as soon as possible. The expert will at least include the following in the report of his assessment: quantities, identified cheese numbers/brands, quality based on a representative random check of the batch; storage method and everything else he deems important.
- b. The board committee will see to it that the experts issue their advice as soon as possible. Parties or the board committee can also require an expert's report at a later stage during the dispute settlement process.

##### **Article 2.**

Within three working days, after arrival of the request referred to in Article 1 at the secretary's office, and administration costs for the first meeting as referred to in Article 32 paragraph 1 have been paid by the petitioner, it will send a signed copy of the request to the other party by registered post. The other party is obliged to indicate in writing as soon as possible, yet no later than within 7 working days after the date of the registered letter as referred to in the first paragraph, whether it also wishes to settle amicably. If the counterparty fails to respond within the set term, or has indicated not to wish to settle amicably, the secretary will inform the petitioner thereof, after which the petitioner can file a request for arbitration in the way described in the following.

##### **Article 3.**

If both parties wish to settle amicably through the intervention of the board committee, the board committee will convene both parties to a meeting within 7 working days after both parties consenting to trying to come to an amicable settlement.

#### **EXPERT'S REPORT**

##### **Article 4.**

If an expert's report is required, the board committee will set the deposit that is to be made to cover the costs related to the drawing up of an expert's report. This deposit will be jointly paid by both parties, each party paying half, unless only one of the parties requires the expert's report, in which case that party will pay the full deposit. The deposit will be paid within the term set by the board committee, and the attempt to come to amicable settlement will only be continued after receipt of the deposit.

#### **Article 5.**

1. As soon as the deposit referred to in Article 4 has been paid, the board committee will immediately invite both parties to appoint an expert within 5 working days after this invitation, using the list of experts referred to in Article 13 of these regulations, while the board committee itself will appoint the third expert. This third expert will act as the chairman of the experts.
2. If one of the parties fails to appoint an expert, the counterparty will be notified, and this will be considered waiving the right to appoint an expert. The procedure will subsequently be continued as stipulated in these regulations.
3. The secretary's office informs the experts of their appointment, stating who their fellow experts are, as well as the location of the goods they will be asked to examine, and will send a copy of this letter to both parties.
4. If one or several of the appointed experts no longer, or cease, to act as such, the board committee will enter into consultation with the parties to appoint one or several experts in replacement of the expert(s) that has (have) dropped out.

#### **Article 6.**

1. The appointed experts will, immediately upon receipt of the notification referred to in Article 5, urge both parties to attend the assessment of the goods that are the subject of the dispute, and to provide any information required by the experts.
2. The experts will, insofar possible, carry out the examination within 5 working days after receiving the notification referred to in Article 5.
3. If one of the parties believes that one or several of the experts serve(s) a personal interest in the issuing of the report, this party will inform the secretary's office of this immediately upon receipt of the notification referred to in Article 5. If the objection is sustained by the board committee, the expert(s) in question will be replaced as stipulated in the previous article.

#### **Article 7.**

Experts will personally examine the goods that are the subject of the dispute, and draw up a report of their findings within 5 working days after the examination, and submit this report to the secretary's office.

#### **Article 8.**

The board committee will, after hearing both parties and taking cognizance of the expert's report, issue its advice for settlement of the dispute to the parties during an oral session.

#### **Article 9.**

If parties subsequently proceed to settlement of the dispute, the board committee will draw up a report of this settlement, and have both parties sign it.

#### **Article 10.**

When an attempt to come to amicable settlement fails to lead to settlement of the dispute, all terms set for arbitration in these regulations will be considered to commence on the day on which the request was received by the secretary's office, so that these terms are not influenced by the time taken to try to settlement amicably.

#### **Article 11.**

The report of the settlement and any expert's report drawn up during the attempt to settle the dispute amicably can be freely assessed by the arbitrator(s).

#### **Article 12.**

1. With the exception of the stipulations from Article 1.b.1 and Article 4, all costs incurred by the attempt to settle the dispute amicably, including administration costs, will be shared equally between the parties. Regardless of the stipulations of Article 1.b.1 and Article 4, the petitioner will be liable to pay all costs if the counterparty defaults on paying its part of the costs.
2. Stipulations from Articles 32 paragraph 3, 33, and 34 are correspondingly applicable for the determination of the costs related to the attempt to settle the dispute amicably.

## **B APPOINTMENT OF ARBITRATORS AND EXPERTS**

### **Article 13.**

The board of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation will every year compile three lists of persons that are eligible to act as:

1. arbitrators of the first instance, a sufficiently large number to provide sufficient choice;
2. arbitrators in appeal procedures, consisting of at least three members and three substitute members;
3. experts, at least ten.

### **Article 14.**

1. The names of the persons placed on each of the aforementioned lists will be listed in alphabetical order. The board of the Foundation will use these lists to appoint arbitrators and experts for the current calendar year.
2. The secretary's office of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation will ensure that the lists of arbitrators and experts are brought to the attention of all affiliated companies.
3. Only the name of the arbitrators and experts, their place of business, and the name of the company they work at will be stated on the lists.

### **Article 15.**

Arbitrators and experts will be selected for a one-year period. People on the lists are eligible for reappointment by the board. Someone can be both on a list of arbitrators of the first instance and a list of experts, but not act as an arbitrator of a dispute when he/she has also acted as an expert in the same dispute.

#### **Article 15 a.**

The board of arbitration will be supported by a clerk. This clerk is a legal counsel who works in the Netherlands. The clerk will be appointed by the board of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation. The clerk will be the same for first instance proceedings and appeal proceedings. The clerk is, among other things, in charge of wording the rulings as ordered by the arbitrators. The clerk does not sit on the Board of Arbitration.

## **C ARBITRATION REQUESTING ARBITRATION**

### **Article 16.**

1. All disputes, both of a legal and a factual nature, arising between parties, and to which these arbitration regulations applies, will be settled through arbitration in a way defined in these arbitration regulations.
2. Except for the stipulation in Article 10, arbitration will be requested by sending a dated letter to that effect in duplicate to the secretary's office of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation by registered post.  
The request must contain:
  - a. name and address of the counterparty;
  - b. a clear brief description of the dispute;
  - c. a demand that is as clear as possible.
3. In case of a prior procedure to come to amicable settlement, regardless of whether this was completed or not, the arbitration will continue to be based on the demand as formulated in the request referred to in Article 1, unless the petitioner wishes to add to or reduce, or otherwise change that demand, of which he is obliged to notify the secretary's office of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation as well as the counterparty without delay.
4. As soon as the secretary's office has determined, under observance of the stipulation of Article 2, that arbitration has started, it will notify the petitioner of the amount he is required to deposit to cover the expected costs of the arbitration.

### **Article 17.**

1. As soon as the stipulations from Article 16 have been complied with, the board will appoint three arbitrators from the list of arbitrators of the first instance as soon as possible. The arbitrators must declare in writing, within three working days after receipt of the notification of appointment, whether they accept the appointment or not, partly in relation to the stipulations of Article 1034 of the Civil Procedures Code.

2. Parties will simultaneously be informed of the appointment of the arbitrator(s) by the secretary's office, in accordance with Article 14 paragraph 3.
3. The three appointed arbitrators will together form the Board of Arbitration.

## **ARBITRATION PROCESS**

### **Article 18.**

When a dispute is dealt with, for whatever reason, beyond the term of one year for which arbitrators are selected as per Articles 13 through 15a, while their appointment still took place within that one-year term, the one-year term will tacitly be extended up to the completion of the arbitration procedure.

### **Article 19.**

The appointed arbitrators will decide amongst themselves who will act as the chairman. The clerk will act as the secretary.

### **Article 20.**

1. The clerk will, as soon as possible after his appointment, approach both parties with the question whether they wish direct verbal processing of the dispute, or wish to explain themselves in writing beforehand.
2. If parties choose verbal processing, the date of the meeting will be set by the Board of Arbitration and the parties will be notified without delay.
3. If parties choose to provide written explanations before the dispute is dealt with by the Board of Arbitration, the Board of Arbitration will decide as soon as possible on which date the petitioner can substantiate his demand as referred to in Article 16 paragraph 2 sub c, and within which term the counterparty must answer to that in writing, possibly with further terms for retort and rejoinder.
4. Each of the parties will submit its written conclusion to the Clerk in writing and providing five copies, upon which the clerk will send one copy to the counterparty, and one to each of the arbitrators.
5. Upon expiry of the terms referred to in the previous paragraphs, or when both parties have declared to waive their right to expound their point of view in writing, a registered letter will be sent by or on behalf of the Board of Arbitration to inform the parties of the time and place of the meeting of the Board of Arbitration to handle dispute in an oral procedure.
6. The Board of Arbitration may opt to convene several meetings, of which the parties or their representatives will be notified in writing. If the Board of Arbitration holds a meeting to discuss the dispute without the parties present, this meeting will also be attended by the clerk.
7. The Board of Arbitration can itself view the batch(es) of cheese the dispute relates to, or order an expert's report, under observance of the stipulations of Articles 4 through 7, whereby "Board Committee" and "Secretary' Office" in these articles are to be read as "Board of Arbitration" and "Clerk".
8. The Board of Arbitration can order the parties to bring or summon witnesses, and can also summon witnesses itself. All oral interrogations and verbal statements must take place at the meeting, except for in exceptional cases, as judged by the arbitrators.

### **Article 21.**

1. Parties can personally attend the meeting or have themselves represented by an authorised representative, providing this representative has a proper mandate.
2. Parties are obliged to provide all data and information required by the Board of Arbitration relating to the arbitration, and to comply with the Board of Arbitration's written or verbal instructions. If a party fails to comply, the Board of Arbitration will be entitled to draw the conclusions as it sees fit in the passing of its judgement.
3. If the petitioner is not present or represented at the first meeting, or if the petitioner fails to provide further explanation of his demand, the Board of Arbitration is entitled to terminate the proceedings by issuing a ruling, unless the counterparty agrees to consider the request for arbitration revoked.
4. If the counterparty is not present or represented, and has not submitted its defence to the Board of Arbitration, the claim will be sustained, unless the Board of Arbitration considers the claim unlawful or unfounded, or sees grounds for the continuation of the arbitration.

### **Article 22.**

1. The counterparty can lodge a counterclaim by response, or at least no later than at the first meeting, providing this claim ensues from the same agreement as the original claim or is directly related to it.
2. A counterclaim must always be submitted to the Clerk in writing.

3. If the counterclaim relates to another agreement entered into under the terms and conditions of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation, separate arbitration must be requested for that claim, albeit that the party lodging that counterclaim has the option to request to have the same Board of Arbitration deal with the counterclaim as is dealing with the original claim.
4. The Board of Arbitration will determine whether to issue a ruling on the counterclaim at the same time as it issues a ruling on the original claim, or whether the counterclaim should be submitted to a wholly independent arbitration procedure.
5. The Board of Arbitration can also require the party lodging the counterclaim to make the deposit referred to in the last paragraph of Article 16 when simultaneously dealing with counterclaim and original claim.

## **CHALLENGING ARBITRATORS OR THE CLERK**

### **Article 23.**

1. If one of the party deems it necessary to challenge one or several arbitrators and/or the Clerk, it will issue a written notification of its intention to that effect to the Board of Arbitration, the secretary’s office of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation, the arbitrator(s) in question, and the counterparty within a week after receipt of the notification of appointment of arbitrators, and this written notification of challenge must contain the following information, otherwise it will be nullified:
  1. the name(s) of the challenged arbitrator(s) and/or Clerk;
  2. reasons for challenging.
 Reasons other than those stated in this letter will not be considered.
2. Arbitrators or the Clerk can be challenged on the grounds the law stipulates as valid reasons for challenging judges.
3. All challenges must be proposed at the same time, otherwise the right to challenge will lapse. If, however, a reason for challenging comes to the attention of the challenging party later, or if a party has received the notification referred to in Article 25, a challenge can still be lodged during the subsequent 24 hours.
4. Proceedings can be suspended by the Board of Arbitration from the day the notification is received.

### **Article 24.**

1. If a challenged arbitrator does not step down within two weeks after receipt of the notification of challenge, the grounds of the challenge will be judged by President of the Court on the request of the petitioner.
2. If this request is not made within four weeks after the date of receipt of the notification of challenge, the right to challenge will lapse, and proceedings, which had been suspended, will be resumed where they left off.
3. If the challenged arbitrator steps down or if the challenge is sustained by the President of the Court, he/she will be replaced as per the regulations that applied to his/her initial appointment, unless parties have agreed another mode of replacement.
4. A challenged Clerk will be replaced by order of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation, with a new clerk appointed as per the stipulations of Article 15.a.

### **Article 25.**

If the arbitrator involved, one of the parties or both parties reside outside the Netherlands, the terms referred to in Article 24 will be six and eight weeks respectively.

## **REPLACEMENT OF ARBITRATORS**

### **Article 26.**

1. If one or several of the appointed arbitrators can no longer act in that capacity, for whatever reason, the board will appoint (an)other arbitrator(s) as stipulated in Article 17. If the failure of one or several arbitrators also causes the assignment of the other arbitrators to end, these will be considered to have been reappointed.
2. If replacement takes place after the notification as referred to in Article 17 was sent, a corrected notification will be sent to both parties. If this results impossible before the meeting of the Board of Arbitration, and one of the parties or both parties fail to show up at the meeting, this party/these parties must be informed of the replacement by way of a letter sent by registered post directly after the meeting.
3. If replacement takes places after the first meeting of arbitrators, the case must be dealt with anew, as per the stipulations of Article 20 and subsequent articles, unless parties agree to continue the proceedings that had already commenced.

## **REVOKING ARBITRATION**

### **Article 27.**

Petitioner can revoke an arbitration request in writing on the following conditions:

1. If arbitration is revoked prior to the Board of Arbitration or experts having started their work, the petitioner will be liable to pay €250 (plus VAT) on top of any already incurred expenses.
2. In case the Board of Arbitration had already summoned the parties, the amount stated in the previous paragraph will be raised to €300 (plus VAT) on top of any already incurred expenses.
3. If arbitration is revoked fewer than 24 hours before the time set for oral proceedings, or during oral proceedings, the petitioner will be liable to pay full arbitration costs, as well as any other already incurred expenses.
4. Revoking after forwarding a defence is only possible if the counterparty declares in writing at the meeting that he consents, with the petitioner also being liable to pay full arbitration costs, as well as any possible other already incurred costs.
5. The Board of Arbitration can exempt the petitioner from payment of above amounts or part of these amounts, if there are exceptional circumstances that can lead the Board of Arbitration to decide to do so.

## **RULING**

### **Article 28.**

1. The Board of Arbitration will rule as fair arbitrators based on the conditions of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation. They will issue a ruling as soon as possible, yet are obliged to rule within six months after the day of the first meeting as part of the arbitration procedure. The Board of Arbitration is entitled to extend the time it needs to come to its ruling, provided it has good grounds for doing so.
2. The Board of Arbitration rules with a majority of votes, and will not make mention of the opinion of the minority. Its ruling will be recorded in a document that will be provided in four copies, each signed, under observance of the stipulations of Article 1057 of the Civil Legal Code. The Clerk will ensure that a copy of the ruling will be sent to the following parties as soon as possible, while taking the stipulations from Article 35 paragraph 6 into account:
  - a. the parties at the same time by registered post;
  - b. the clerk of the Court of the district in which the place of arbitration is situated;
  - c. the secretary's office of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation.
3. The secretary's office of the Dutch Dairy Exchange Foundation is entitled to reveal the ruling to third parties and/or publish it, providing the anonymity of the parties is guaranteed.

## **APPEAL**

### **Article 29.**

The Board of Arbitration for Appeals is made up of three arbitrators who appear on the corresponding list referred to in Article 13.

### **Article 30.**

1. Each of the parties is entitled to appeal the ruling of the Board of Arbitration and submit it to the Board of Arbitration for Appeals, which either party can do by submitting a written statement to the secretary's office of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation within one month after the date the ruling as referred to in Article 27 was sent to the parties.
2. Within one month after abovementioned statement, the petitioner will deposit the amount defined by the Board of Arbitration for Appeals to cover arbitration costs with the secretary's office of the “Nederlandse Zuivelbeurs” (Dutch Dairy Exchange) Foundation.
3. The counterparty is entitled to lodge a counter-appeal, also after the abovementioned term, yet no later than at the first meeting of the appeal arbitrators. The counterparty can in that case also be ordered to deposit an amount to cover arbitration costs.

### **Article 31.**

Articles 16 through 28 apply correspondingly to Appeal proceedings, but in cases referred to in Article 26 appointment will happen from the list of substitutes referred to in Article 13 sub 2, and the amounts referred to in Article 27 paragraph 1 and 2 will be doubled. And the following will also be observed: A new demand cannot be lodged during an Appeal procedure, barring cases of demanding payment of interest, rent, damages or expenses, which have become payable or which arose after the original claim being revealed.

## **ADMINISTRATION COSTS**

### **Article 32.**

1. The petitioner will be liable to pay a fixed amount of €1000 (plus VAT) to cover administration costs upon commencement of the arbitration, which is payable to the secretary's office of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation. In case of an Appeal, the abovementioned amount will be payable again to cover administration costs.
2. The secretary's office of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation will take care of the collection of payable administration fees.

## **WITNESSES AND EXPERTS**

### **Article 33.**

Witnesses and experts heard at the arbitration session are entitled to compensation as per the official rate of legal charges and wages in civil procedures. The arbitrators will determine the compensation.

## **COSTS OF ARBITRATORS**

### **Article 34.**

Remuneration for arbitrators amounts to €275 (plus VAT) per meeting per arbitrators, and for Appeal arbitrators is €325 (plus VAT) per meeting per arbitrator. Apart from this remuneration, arbitrators can also claim back travel and accommodation expenses, as well as further expenses incurred as part of their arbitration efforts.

## **ARBITRATION COSTS**

### **Article 35.**

1. Arbitration costs are understood to be the costs as referred to in Articles 32, 33, and 34, on top of all further expenses that were incurred for the arbitration, as judged by the arbitrators on the basis of reasonableness, including costs of possible expert's examinations commissioned by the Board of Arbitration (for Appeals).
2. Legal expenses of the parties will, except in exceptional cases as judged by the arbitrators, fall to the respective parties who solicited that legal assistance.

## **ALLOCATION OF ARBITRATION COSTS**

### **Article 35 a**

1. The Board of Arbitration (for Appeals) estimates in its ruling the amount of the arbitration costs up to the filing of the ruling with the Court, including costs for the Clerk's work.
2. The amount calculated by the Board of Arbitration (for Appeals) in paragraph 1 is allocated to the parties. How this amount is divided between the parties will be laid down in the ruling.
3. The secretary is authorised to order the petitioner to deposit an additional amount when paying initial administration costs, which additional amount will be used to cover advance payments and remuneration for the arbitrators.
4. The secretary can at any time require parties to deposit more funds.
5. If the respondent fails to pay the costs that are allocated to it in the ruling, these will be paid by the petitioner, after which the petitioner can claim these costs from the respondent.
6. Costs allocated to the petitioner, or when paragraph 4 applies, will be covered by the deposit paid by the petitioner as much as possible. Possible remaining amounts will be charged to the petitioner by the secretary's office of the "Nederlandse Zuivelbeurs" (Dutch Dairy Exchange) Foundation.
7. Contrary to the stipulations in paragraph 3, 4, and 5, the Board of Arbitration (for Appeals) can decide to order both parties to deposit the full estimated amount from paragraph 1 before proceeding to publication of the ruling, if it deems that expedient. After settlement of the costs allocated to the parties, any possible surplus will be returned to the parties.
8. Invoices for costs as referred to in Article 32 through 35a sent to parties must have been paid within eight days after the invoice date. Failing to comply with that payment term entitles the Dutch Dairy Exchange Foundation to commence immediate collection procedures, with any additional expenses incurred as a result falling to the defaulting party.

## **FINAL CLAUSES**

### **Article 36.**

When this Dispute Settlement Procedure and Arbitration Regulations refer to working days, this does not include Saturdays. The General Extension of Time Limits Act also applies.

### **Article 37.**

When one of the parties has acted in breach of one of the stipulations from these regulations, and the other party has failed to lodge a protest against that within six working days, this party will be considered to have renounced its right to appeal to the breach.

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Approved at the board meeting of 16 may 2008.

J. Anker (chairman)  
Mr. A.M. Hess (secretary)

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