

NOFOTA

Netherlands Oils, Fats and Oilseeds Trade Association

Groundnuts Division
Secretariat: "Plaza Building", Weena 666, 3012 CN, P.O. Box 190, 3000 AD Rotterdam

CONTRACT

20

FOR THE TRADE IN EDIBLE GROUNDNUTS

Spot conditions/free on truck/free delivered

Date

Seller at

Buyer at

Broker at

Quantity metric tons

Description groundnut in shells/groundnut kernels *)
.....

Quality *)
inspected and approved by buyer
after checking of quality by buyer
on approval by buyer
about as per sample Nr. in the possession of
sound and merchantable

Packing good single bags, suitable for edible groundnuts

Price per metric ton
gross weight at place of loading including packing, in transit/E.C. cleared *)
.....

Transfer of title/
Delivery *) during at seller's option/buyer's call *)
free on truck ex warehouse
free delivered buyer's warehouse

Payment without discount against invoice and storage warrant/delivery order/release *)

Special conditions
.....

and on the following conditions, the hand-written text to supersede the printed text

Seller's signature

Buyer's signature

*) strike out if not applicable

Article 1

- Quantity, Margin and Settlement**
- Weighing**
1. The seller shall be entitled to deliver 2% more or less, to be settled at the contract price.
 2. The seller shall have the weight ascertained at the place of loading in the customary manner and at his expense, unless otherwise agreed. The seller to allow the buyer to supervise the weighing. If the buyer wants to avail himself of that right the superintendent is to be appointed in due time. If the buyer fails to supervise the weighing or to have it supervised the seller shall be entitled to ascertain the weight or to have it ascertained unilaterally. The weight ascertained in accordance with the foregoing shall be binding upon both parties.

Article 2

- Spot sales**
- Free on truck**
- Free delivered**
- Delivery within a specified period**
- Delivery in parts**
- Notice of delivery/call**
1. In case the goods have been sold free on truck ex warehouse, the costs of delivery including those of loading and stowing shall be for account of the seller. Title of goods to be delivered shall be transferred by means of documents or by release of the goods at seller's option.
 2. If the goods have been sold free delivered buyer's warehouse, the transfer of title shall be at the place of destination and the seller has to arrange transport to the place of destination for his account. The risks of transport shall be for seller's account subject to the provisions of the articles 6 and 7 concerning quality and/or condition.
 3. If delivery within a specified period has been agreed upon, the seller shall make the goods available to the buyer within that period on a date selected by the seller, unless the goods have been sold for delivery at buyer's call. If delivery for any one half of a month is stipulated and the month in question has an odd number of days, the middle day of that month shall be considered to belong to the relevant half of the month.
 4. If "immediate" delivery is agreed upon the seller shall deliver the goods to the buyer not later than the seventh day after date of sale; if the contract stipulates prompt delivery the seller shall deliver the goods to the buyer not later than the fourteenth day after date of sale.
 5. The seller shall be entitled to deliver in parts. Each part to stand as a separate contract except with regard to the provision of article 1, paragraph 1.
 6. If the goods have been sold at buyer's call, the buyer shall give notice of call at least ten days before the required day of delivery.
If notice of call has not been given on the tenth day before the last day of the agreed period the notice of call shall be deemed to have been given on that day for delivery on the last day of that period.

Article 3

- Payment**
- Payment in advance as security**
1. Payment is to be made against the documents provided for in the particular contract within 72 hours of presentation (hours of non-working days not to be counted). In case of a release of goods payment shall be made within eight days of the date of provisional or final invoice at seller's option. Goods and/or documents shall remain the property of the seller until full payment of the purchase price.
 2. Payment shall not be deemed to have been effected before receipt of the amount due by the seller or his bank. If a party pays by bank transfer, payment has to be effected on the day stipulated in the contract, value has to be at the latest on the second working day after the day of payment, failing which interest is due.
 3. In the case of a contract according to which payment after delivery has been stipulated the seller shall always be entitled to demand payment before delivery on the basis of the contract quantity concerned, provided that the buyer is allowed interest at the rate of 5% above the current bank rate of interest for the currency involved. This interest is to be calculated on the amount paid in advance over the period between the date of payment and the date on which payment should have been made according to the original stipulation.
 4. The seller shall notify the buyer that he demands payment before delivery at least four working days before the date of delivery.
 5. Instead of making a payment before delivery the buyer shall be entitled to have an irrevocable bankguarantee issued in favour of the seller at seller's costs.
 6. After payment the guarantee shall be void.

Article 4

- Taking delivery**
- Storage**
1. The buyer shall take delivery of stored goods during the customary working hours. Storage and insurance costs commencing the first day following the period of delivery shall be for buyer's account.
 2. The buyer shall take delivery of the goods during the customary working hours immediately upon arrival at the place of destination.
 3. If the buyer fails to take delivery in due time from seller's premises or at the place of arrival for reasons other than force majeure, the seller shall be entitled to store the goods, if required with third parties, at buyer's expense and risk. If the seller insures the goods whilst in storage, he shall be entitled to charge the premium to the buyer.
 4. If the goods have not been weighed within three months after they have been put at buyer's disposal, the invoiced weight shall be final.

Article 5

- Default**
1. In case the presentation of documents or release or delivery of the goods has not been made within the contract period the seller shall be in default even without having been given notice of default.
 2. If the buyer fails to make payment in accordance with the contract conditions, he shall be in default without having been given notice of default.
 3. If the buyer fails to take delivery in due time he shall be in default without having been given notice of default, unless he makes payment immediately, subject to the provisions of article 4 under "storage".

4. The significance and the consequences of either party failing to observe any term other than those referred to in the first three paragraphs of this article shall, if necessary, be determined by arbitrators.
5. In case of non-fulfilment (including non timely fulfilment) of its principal obligations by either party, the non-fulfilling party shall be in default without notice of default being required and the other party shall be entitled at his option:
 - a. immediately to cancel the contract without any indemnification;
 - b. to buy or sell as the case may be against the defaulter through the intermediary of a sworn broker within three working days after giving notice thereof and to claim the adverse price difference from the defaulter;
 - c. to claim a possible adverse difference between the contract price and the market value on the first working day after the day of default from the defaulter.
6. If the defaulter will be dissatisfied with the price of the purchase or sale mentioned under b) or with the price difference sub c), the price difference shall be fixed by arbitration.
7. Any price difference shall be computed on the basis of the mean contract quantity, irrespective of which party being the defaulter. If a minimum and maximum quantity is provided, the mean thereof shall govern.
8. Any other or further damages may be claimed, if they can be attributed to the non-fulfilment of the defaulter, and, failing agreement, be fixed by arbitration.
9. In case of non-payment after the buyer has taken possession of the goods the seller may either sue for the price with interest and costs or cancel the contract and claim any damages incurred in consequence thereof.

Article 6

Sampling

1. Samples intended for examination by arbitrators shall be drawn by and at the expense of the buyer on delivery or, in the case of release within seven working days of the release in the way usual at the place of delivery, under supervision of the seller or the seller's superintendent; and such samples shall be drawn after bulking from 2% of the number of externally sound and undamaged bags. These samples shall be sealed jointly by (the representatives of) the seller and the buyer.
The samples shall bear the names of the seller and the buyer, the quantity, the description and the location of the goods, the warrant number and the date of sampling. The samples are to be kept under climatized conditions.
2. The buyer shall give notice to the seller or his representative in time.
3. If the buyer fails to notify the seller or his representative in due time, he shall forfeit any right of complaint.
4. The buyer may proceed to seal samples without the seller or his superintendent being present only if the seller has failed to appoint a superintendent, or if he or his superintendent, although duly notified by the buyer of the place and time of sampling, is not present at the place and time indicated.
In that case the seller shall accept the sealed samples drawn as prescribed in the first paragraph of this article, but without supervision and co-sealing by the seller's superintendent.

Article 7

Quality and condition

1. Quality of goods includes their state or condition.
2. If the sale has been made on the condition "inspected and approved by buyer", the seller is not responsible for the quality.
3. If the sale has been made on the condition after "checking of quality by buyer", the buyer shall be entitled to inspect the parcel indicated by the seller at the place of delivery within 72 hours after having been given the opportunity to do so and to reject it, if it is not in accordance with the description on which it was sold, provided that notice of such rejection has been given to the seller within the aforementioned period. In case of differences of opinion arbitrators shall decide. When the rejection is accepted by the seller or found correct by arbitrators, the contract is cancelled without any obligation to compensate for damages.
4. If the sale has been made on the condition "on approval by buyer", the buyer shall be entitled to inspect the parcel indicated by the seller at the place of delivery within 72 hours after having been given the opportunity to do so and to reject it without assigning any reason, provided that notice of such rejection has been given to the seller within the aforementioned period. In default thereof the parcel will be deemed approved. After approval, the seller is not responsible for the quality. In case of rejection in due time the contract is cancelled without any obligation to compensate for damages.
5. Should the buyer, in case of a sale "about as per sample" or of a sale of "sound and merchantable", be of the opinion that the quality is not in accordance with the required standard, the buyer shall not on that account have the right to demand cancellation of the contract, but the buyer may claim an allowance on that account, within seven days of delivery, such allowance to be mutually agreed. If buyer's claim on that account is dismissed by the seller, the buyer shall claim arbitration within three weeks of that dismissal, on pain of loss of right.
6. If, in case of a sale "about as per sample" or of a sale of "sound and merchantable", the inferior quality is of an exceptional nature or attributable to bad faith on the seller's part, the buyer shall be entitled to demand that the contract be cancelled in respect of the consignment in question and to claim refund of the invoiced amount paid, together with or without damages as referred to in article 5.
7. The arbitrators shall, if necessary, determine who shall bear the costs, damages and interest incurred in the course of the negotiations and/or arbitration.

Article 8

Insolvency

1. If before fulfilment of the contract, either party suspends payments, or applies for an official moratorium, or is adjudicated bankrupt, the contract shall stand void and settlement shall be made at the market value on the first business day after the day on which the aforementioned event can be deemed to have been common knowledge.
2. Should the parties fail to agree in this respect, the aforementioned day and/or the market value shall be determined by arbitration.

Article 9

Force Majeure

1. Force majeure is understood to mean any unforeseen exceptional circumstances beyond seller's control and not for his account or at his risk, which has arisen after conclusion of the contract as a result of which he is not able to deliver the goods sold.
2. The seller shall notify the buyer immediately after force majeure occurs, in urgent cases by fax or telex and in any event in writing.
3. Upon termination of force majeure the seller shall be obliged to deliver the goods as soon as possible. The buyer shall be allowed a reasonable period to take delivery of the goods.
4. If the seller is unable to deliver the goods at the latest on the sixtieth day after the last day, on which he should have delivered the goods, the contract shall be cancelled.
5. If, as a result of force majeure, the goods which the seller destined for the buyer are wholly or partly lost, the contract or that part thereof shall be cancelled; the seller shall be responsible for furnishing evidence that those goods were intended for delivery against the contract in question.
6. If an event constituting force majeure occurs affecting either the seller or the buyer, which does not come within the scope of the foregoing, then, failing agreement between the parties, a dispute shall be deemed to exist and the consequences to the parties of such force majeure shall be decided by arbitration according to equity.

Article 10

Export and Import documents

In case of contracts for export the seller shall provide all export documents; all expenses connected herewith to be for his account. On concluding the contract buyer has to furnish to seller all necessary details thus enabling seller to provide for the export-licenses etc. in due time. The buyer shall be responsible for all import documents which might be required in the country of destination. All expenses connected herewith are for buyer's account.

Article 11

Duties, Levies and Taxes

1. If sold/bought for export, the duties, levies and taxes bearing upon the goods in the exporting country shall be for account of the seller and the duties, levies and taxes in the importing country shall be for account of the buyer.
2. If not sold/bought for export, any duties, levies and taxes bearing upon the goods shall be for the account of the seller.
3. Unless explicitly agreed otherwise, in this latter case duties, levies and taxes, in as far as these have become effective or have been increased between the date of the sale and the date of delivery shall be for account of the buyer; any repeals and/or reductions thereof between the dates referred to above, shall be for the benefit of the buyer.

Article 12

Days, Non-working days and Business hours

1. In any month containing an odd number of days, the middle day shall be reckoned as belonging to both halves of the month.
2. Saturdays, Sundays, public holidays and any days or parts of days which the Association shall declare to be non-working days at the place where, in execution of this contract, acts have to be performed shall not be considered as working days.
3. Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday, public holiday or on any day declared to be a non-working day the time so limited shall be extended until the first working day thereafter. The contractual period of delivery is not to be affected by this clause. All working days shall be deemed to end at 17:00 hours local time.

Article 13

Dutch Law

This contract and any further agreements arising therefrom shall be subject to the provisions of Dutch Law.

Article 14

International Convention(s)

The Uniform Law(s) on the International Sale of Goods (ULIS), the Uniform Law on the Formation of Contracts (ULFIS) for the International Sale of Goods and the Convention of the International Sale of Goods (CISG), either in the international versions of the respective treaties or in whatever national version, shall not apply to this contract.

Article 15

Arbitration

1. Any dispute arising out of this contract, as well as any dispute arising out of further agreements resulting from this contract, shall be exclusively referred to arbitration in accordance with the Rules for Arbitration of NOFOTA, Netherlands Oils, Fats and Oilseeds Trade Association, Groundnuts Division, Rotterdam, in force on the date of this contract.
2. Persons through whose intermediary this contract was concluded and who signed the sale and purchase confirmations shall submit to the aforementioned arbitration of NOFOTA any dispute which may arise either out of this contract or out of their intermediary. They may be called upon as third parties in a dispute between the buyer and the seller.
3. A dispute shall also then be deemed to exist, if one of the parties fails to pay a claim of the other party without contesting the correctness thereof.
4. Without prejudice to the provisions of article 7, paragraph 5, application for arbitration shall, on pain and loss of rights, be made in accordance with the Rules for Arbitration of NOFOTA, Groundnuts Division, within three months after the day on which the dispute has arisen, exceptional cases, at the discretion of arbitrators, excepted. The party applying for arbitration shall notify the other party of the application at the same time. In a string and in a circle applications for arbitration shall also be admitted after expiry of the aforementioned period, provided that the first application was made in good time and the subsequent applications/notices were made/passed on immediately upon receipt of the notice of the preceding application.