

## 1. PREAMBLE

These General Trade Rules shall apply, except when altered by express agreement accepted in writing by both the seller and the buyer. They are based on the UTIPULP General Trade Rules for wood pulp, with modifications in clauses 2, 4c, 6b, 7, 8, 11, and 16.

## 2. QUANTITY: WEIGHT AND MOISTURE.

Unless otherwise stated, the words "tonne/ton" or "ADMT" in this contract shall mean 1,000 kilograms air-dry weight, gross for net. The term air-dry shall mean ninety per cent (90%) absolutely dry pulp and ten per cent (10%) water.

The pulp shall be packed in bales of declared uniform weight and air-dry content or a specification to be given stating the weight and air-dry content and number of each bale. Each bale shall bear a number or other identification mark to enable the time of manufacture to be determined by the seller in case of need.

## 3. QUANTITY: MARGIN.

For the convenience of chartering a margin of ten percent (10%) more or less on the contract quantity is allowed. When two or more shipments are made under the same contract, the margin for the total contract quantity may not exceed ten per cent (10%) of what is due to be shipped with the last vessel to fulfil the contract.

## 4. QUANTITY: DISPUTES ABOUT AIR-DRY QUANTITY.

(a) If the buyer shall dispute the air-dry content of the pulp invoiced, the buyer must do so within a time limit of thirty (30) days after the discharge of the goods at the place of destination and base his claim on a test which must show a difference of more than one percent (1%) in content of the air-dry pulp. That being the case the buyer may submit his claim to the seller and at the same time furnish the seller with the details of the buyer's test and with at least two names of suitable and competent analysts. If at the time there exists a valid list of analysts approved by the trade associations of the parties, the analysts shall in the first place always be chosen from that list.

(b) If the parties fail to agree on the exact quantity within seven (7) days of the seller receiving the claim and the details of the test, a retest shall take place as soon as the seller has chosen one of the proposed analysts. If the seller has not made his choice within fifteen (15) days of the receipt of the names, the buyer has the right to appoint one of the proposed analysts.

(c) The retest shall be made in accordance with existing TAPPI T-210 guidelines, ISO 638 and ISO 801-3 standards or for grades not covered by such recommendations according to a method agreed on between buyer and seller. The seller shall have the right to be represented at the retest. Not less than one half (1/2) of the consignment in dispute shall be available for the retest otherwise no claim can be established. If the difference in net weight does not exceed one per cent (1%), as compared with the original invoice, the invoice shall stand as originally rendered. The analyst's findings shall be final and all expenses incidental to the retest shall be paid by the party in error.

(d) The buyer shall, however, in any case pay the invoice when due. Final adjustment shall be made when the retest is completed and according to the result of the same.

## 5. QUALITY.

(a) If the buyer shall dispute the quality of the pulp delivered, the buyer must do so within the time limit of thirty (30) days after the discharge of the goods at the place of destination and within the same time state his claim as well as furnish the seller with the facts on which he is basing the said claim.

(b) If the buyer has made his claim as specified above and the parties cannot reach a settlement of the dispute, the matter shall be referred to arbitration. Not less than eighty percent (80%) of the consignment under dispute shall be available for the drawing of samples, which can be determined by the arbitrators otherwise no claim can be established.

(c) Should the pulp delivered be found on arbitration not to conform with the quality of the pulp according to the specification and/or sample sold on, but usable nevertheless by the buyer in his normal production, the arbitrators shall award an adequate allowance to the buyer, but should the pulp be found not so usable, the arbitrators shall award rejection.

The arbitrators shall, however, be entitled to award rejection only if eighty per cent (80%) or more is left of the consignment in question.

(d) In the event of an award of rejection or of an allowance of twenty per cent (20%) or over of the c.i.f. value on account of quality having been made in favour of the buyer on two successive consignments of the same brand of pulp under this clause, the buyer has the right to cancel the balance of the contract if only one brand is contracted for, and, if more than one brand is contracted for, to cancel all future deliveries of the brand which is the subject of the award.

(e) The buyer shall promptly unload and properly store and cover by insurance any shipment made to the buyer pending a decision of the dispute.

(f) The buyer shall in any case pay the invoice when due. Final adjustment shall be made when the decision of the arbitrators is given and according to the result of the same.

## 6. DELAYED PAYMENT AND OWNERSHIP OF THE GOODS.

(a) If the buyer delays payment, each time it becomes due the seller shall be entitled to interest on such sum at a rate of five per cent (5%) above the official base rate or the official minimum lending rate as appropriate to the country of the buyer.

Buyer shall compensate seller for any currency losses suffered by seller as a result of buyer's failure to pay on due date for payment or where buyer does not pay in the currency as quoted.

(b) If the buyer is in default of payment and the delay is not attributable to errors by transferring banks, the seller has the right to cancel the contract with effect fourteen (14) days after giving notice if the payment has then still not reached the seller. In the case of installment contracts such cancellation applies to the balance of the contract including or not including, as the seller so elects, the shipment for which the buyer is in default of payment.

(c) Delivered pulp shall--to the extent permitted by the law of the buyer's country--remain the property of the seller until the whole sum payable under the contract is paid. The ownership of the pulp includes the right to the goods as delivered or adapted and the right to the receivables which the buyer may have acquired from disposing of the pulp or products made thereof.

(d) Should the buyer default in making any payment under the terms of the contract, the seller shall have the right to withhold deliveries until payment upon giving notice to that effect to the buyer. (e) Should the buyer or the seller become insolvent or go into liquidation or have a receiver appointed or otherwise be found to be in such a financial position that it may reasonably be assumed that he will not be able to fulfil his obligations, the other party shall have the right to cancel the contract if the first party has not within ten (10) days after given notice furnished a satisfactory guarantee for his fulfillment of the contract.

## 7. LIMITATION OF DAMAGES.

TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE SELLER HEREBY DISCLAIMS ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PULP, INCLUDING THOSE OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE except that upon delivery the pulp (i) is sold with good title, and (ii) will comply – within the manufacturing tolerances customary in the industry - in all material aspects with the Seller's specifications.

If the pulp delivered does not comply with the agreed specifications and a rejection of the faulty pulp is agreed or awarded by arbitration, the seller is under the obligation without undue delay to replace the

faulty pulp at his own expense and reimburse the expenses the buyer may have incurred in receiving, storing and reloading the faulty pulp but is not otherwise liable to pay compensation or damages of any kind because of the defect. When there is a lack of quantity or a defect in quality, which is not causing rejection, the buyer pays only for the delivered pulp or for the reduced value, respectively, of the faulty pulp and shall not otherwise be compensated and is not entitled to damages.

(b) When either party is liable for damages to the other, these shall not exceed the loss, which the party in fault could reasonably have foreseen at the time of the conclusion of the contract nor include consequential damages or lost profits. In any case, the seller's total aggregate liability shall be limited to the price for the pulp concerned.

(c) If one party alleges a breach of contract by the other party, he must take all necessary measures to mitigate the loss resulting from the breach, provided that and in so far as he can do so without unreasonable inconvenience or cost. If he fails to take such measures, the party in breach may claim a reduction in the damages. An alleged breach of the contract must be communicated in writing to the other party within the time limits set out in the contract or if no time limit has been set out, without undue delay.

(d) The above mentioned limitations of liability shall not apply with regard to either party's liability for any of the following:

- death or personal injury caused by that party's gross negligence;
- fraud or fraudulent misrepresentation; or
- any other matter for which liability may not be limited or excluded by law.

#### **8. RELIEFS (force majeure).**

(a) The following shall be considered as cases of relief if they intervene after the conclusion of the contract - or when they have occurred before that time, if their effects were not clearly foreseeable before the conclusion - and they prevent, hinder or delay the buyer's acceptance of the pulp or the seller's production or delivery by agreed means of pulp. Such cases of relief shall include, but not be limited to: war; war risk; insurrection; blockade; requisition; imposition of sanctions, embargoes; calling up of personnel for military service; currency restrictions; acts of Governmental authorities (including without limitation imposing export or import prohibitions, quota or restrictions); restrictions in the use of power; interruption or failure of utility services; labour conflicts; general shortage of personnel, transport and materials; water shortage; fire; flood; storm or other natural disaster, epidemics or pandemics; collapse of buildings, explosions; obstruction of railways; obstruction of navigation by ice at port of shipment loss or detention at sea; non delivery, faulty or delayed delivery by the seller's suppliers of raw material and other commodities for the production and any other circumstances beyond the control of the parties.

(b) The buyer or the seller, as the case may be, may suspend performance under this contract on the grounds of relief, neither party being responsible to the other party for any damage resulting from such suspension. Shipment in transit from seller's mills must, however, always be accepted by the buyer.

(c) In the event of suspension of performance, the shipment omitted during the period of suspension can be cancelled without liability to either party, and subsequent shipments shall be resumed thereafter according to contract.

(d) The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing or by facsimile without delay on the occurrence of the intervention and on the cessation thereof and, as soon as practicable, notify the other party to what extent the claim will necessitate a suspension.

#### **9. DELAYED SHIPMENT CAUSED BY LATE ARRIVAL OF SHIP.**

Notwithstanding anything contained herein, in the event of a vessel which has been chartered in accordance with the terms hereof being delayed in arriving at the port of loading for a period not exceeding twenty-one (21) days after the expiry of the time of shipment provided by this contract, such delay shall not by itself constitute a cause for refusing to ship or to take delivery of the relevant shipment or for claiming damages.

#### **10. INCREASED COSTS.**

Should after the conclusion of the contract occur a substantial increase of not less than ten per cent (10%) of the total costs for the production and the transportation of pulp, the seller shall have the right to demand a renegotiation of the price in respect of quantities due for shipment thirty (30) days after notice of renegotiation, has been served in order to obtain reimbursement for his increased costs as long as these continue. If agreement cannot be reached within these thirty (30) days, the seller may cancel the undelivered part of the contracted quantity.

#### **11. CLAIMS.**

All claims must be made in writing within thirty (30) days after the discharge of the goods at the place of destination. No claims sent after that time shall be recognized.

#### **12. SHIPMENTS.**

Each shipment under this contract shall be considered as a separate contract and default on one or more shipments shall not invalidate the balance of the contract except as herein otherwise provided. The present clause does not, however, affect the applicability of the clauses 3 and 10 above.

#### **13. APPLICABLE LAW.**

The contract and the legal relations between the buyer and the seller shall be governed by the law of the country of the seller.

#### **14. LANGUAGE.**

These General Terms and Conditions are made in the English language, If these General Terms and Conditions have been translated to a different language than the English language and differences of meaning and interpretation should occur, the English version shall be the governing language of these General Trade Rules of Wood Pulp. and Conditions.

#### **15. ARBITRATION.**

All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the Rules. The proceedings shall take place in Vienna. The language of the proceedings shall be English.

#### **16. REFERENCE.**

Code of Conduct  
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Wood and Pulp Policy:  
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