

## **MPC-Conditions**

for use within the European Union

## **MPC-Conditions**

for use outside the European Union

## **MPC Arbitration Regulations**

**2013**



Gemzu, established in The Hague (The Netherlands).

Deposited on Januari 28, 2013 under number 9/2013  
at the Registry of the District Court of The Hague.

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Of  
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## TABLE OF CONTENTS

### **MPC-Conditions for use within the European Union**

Article 1.	Confirmation of the Contract	Page 1
Article 2.	Quality and Composition	Page 1
Article 3.	Packaging	Page 1
Article 4.	Instructions by the Buyer	Page 1
Article 5.	Time of Delivery	Page 2
Article 6.	Method and Site of Delivery	Page 2
Article 7.	Cycle	Page 3
Article 8.	Payment; Security	Page 3
Article 9.	Retention of Title	Page 3
Article 10.	Premature Cancellation	Page 4
Article 11.	Complaints and Liability	Page 4
Article 12.	Sampling and Analysis	Page 5
Article 13.	Delivery in Installments	Page 6
Article 14.	Non-Imputable Shortcoming	Page 6
Article 15.	Arbitration	Page 6
Article 16.	Applicable law	Page 7

### **MPC-Conditions third countries for use outside the European Union**

Article 1.	Confirmation of the Contract	Page 8
Article 2.	Quality and Composition	Page 8
Article 3.	Packaging	Page 8
Article 4.	Instructions by the Buyer; Documents	Page 9
Article 5.	Delivery	Page 9
Article 6.	Payment; Security	Page 9
Article 7.	Retention of Title	Page 10
Article 8.	Premature Cancellation	Page 10
Article 9.	Complaints and Liability	Page 10
Article 10.	Sampling and Analysis	Page 11
Article 11.	Delivery in Installments	Page 12
Article 12.	Non-Imputable Shortcoming	Page 12
Article 13.	Arbitration	Page 12
Article 14.	Applicable law	Page 13

## TABLE OF CONTENTS

### **MPC-Arbitration Regulations**

General	
Article 1.	Page 14
Appointment of Arbitrators	
Article 2.	Page 15
Article 3.	Page 15
Article 4.	Page 15
Commencement of arbitration	
Article 5. Application: Appointment of secretary	Page 16
Article 6. List procedure	Page 16
Article 7. Letter of appointment: acceptance of assignment: notification of appointment to parties	Page 17
Article 8. Substitution of an arbitrator	Page 17
Article 9. Challenge of an arbitrator	Page 17
Handling of the arbitration	
Article 10. Arbitration records: sending of documents and notifications	Page 19
Article 11. Location of arbitration	Page 19
Article 12. Proceedings in general	Page 19
Article 13. Hearing: exchange of pleadings	Page 20
Article 14. Counterclaim	Page 21
Article 15. Nonappearance	Page 21
Article 16. Withdrawing the arbitration	Page 22
Article 17. Ruling	Page 22
Article 18. Administration costs	Page 23
Article 19. Costs of arbitrators	Page 23
Article 20. Costs of arbitration	Page 23
Article 21. Final stipulations	Page 24

**MPC CONDITIONS**  
***for use within the European Union***

adopted by the association Gemzu established in The Hague (the Netherlands). These MPC Conditions shall commence on 1 April 2013 and shall apply to agreements concluded on or after 1 April 2013.

If a contract is based on "MPC Conditions" and states that both the loading port/site and the port/site of destination are located within the EU, the following terms and conditions shall apply, barring any other stipulations:

**Article 1. Confirmation of the Contract**

1. Confirmation by the seller shall serve as full proof of the contract, unless the buyer has filed a written objection to its contents within three working days of receipt.
2. If the seller has not confirmed the contract in writing within ten working days of its conclusion, the buyer's confirmation shall serve as full proof of the contract, unless the seller has filed a written objection to its contents within three working days of receipt.

**Article 2. Quality and Composition**

The goods delivered shall at least satisfy the requirements for quality and composition as customary in the trade.

**Article 3. Packaging**

1. The packaging shall be provided with the brands and wording legally required in the country of origin. The packaging shall also feature the brands and wording that the buyer stipulated in writing on realization of the contract.
2. The costs associated with meeting the requirements for packaging, labeling, stamping and palletizing established on realization of the contract shall be borne by the buyer.

**Article 4. Instructions by the Buyer**

1. The buyer shall be obliged to issue his instructions for delivery fully and at such notice as to enable the seller to deliver within the agreed term, observing a call period of five working days.
2. If the buyer fails to issue his instructions on time, the seller shall be entitled to invoice the goods as of the last delivery day resulting from the purchase and demand payment as if the same had been supplied on said day, provided that he keeps said goods available for the buyer at the latter's expense and risk.

In that event, the seller shall also be entitled to cancel the contract in accordance with Article 10 of the 'MPC Conditions'.

3. As long as the seller does not exercise any of the rights conferred upon him in the previous paragraph, the buyer shall remain entitled to exercise the right of call, observing a new delivery term of five working days, without prejudice to the provisions of the first paragraph of this article.

#### **Article 5. Time of Delivery**

Delivery and acceptance shall occur as follows:

- a. if 'immediately' is agreed upon: within five working days;
- b. if 'promptly' is agreed upon or no term is stated: within a fortnight;
- c. if it is agreed to effect the delivery in a particular month: no later than the last working day of said month;
- d. if it is agreed to effect the delivery in several months: an approximately proportionate portion no later than the last day of each of those months;
- e. if it is agreed that delivery is to be effected 'up to and including' a certain date: no later than said date;
- f. if 'distributed delivery' within a certain period is agreed upon: approximately identical volumes every week, no later than the last working day of every week;
- g. if delivery in a certain month is agreed upon with the addition of 'on call': no later than five working days after the call, on the understanding that said period shall not commence before the first day of the month in which delivery is to be effected.

#### **Article 6. Method and Site of Delivery**

1. Delivery shall be effected ex works, unless otherwise agreed upon.
2. The transport and delivery terms employed in quotations, contracts of sale or confirmations of purchase shall be interpreted in accordance with the description provided in the INCO terms applicable at the time of the contract, in so far as not otherwise provided in said documents and/or these conditions.
3. In the event of bulk deliveries or, as the case may be, big bags, the following provisions shall also apply:
  - a. In the event of an EXW/FCA delivery, the weight reading on the officially calibrated weighing bridge specified by the supplier shall be normative.
  - b. In the event of a CIP/CPT/DDU delivery, the weight reading on the officially calibrated weighing bridge specified by the recipient shall be normative.
  - c. The volume resulting from the contract shall be decisive. Any deficient or excess quantities delivered shall be settled at the market price on the agreed delivery date.

### **Article 7. Cycle**

If, in contracts between several parties, a 'Cycle' is established, said parties shall also be subject to the following provisions:

1. Each party shall be obligated to inform all the participants in the Cycle of the purchase price and selling price, respectively.
2. All the participants in the Cycle shall settle bills with their buyers and sellers on the basis of the price differences compared with the base price.
3. The base price shall be lowest price in the Cycle.
4. Payment shall be effected on the last working day of the month to which the Cycle relates.

### **Article 8. Payment; Security**

1. If no other payment condition is agreed upon, payment of the agreed price invoiced by the seller shall be effected within 14 days of delivery, on the understanding that the invoice amount must have been credited to the seller's account on the due date without deduction of any remittance expenses.
2. Irrespective of any understandings between the seller and the buyer with regard to the credit terms, the seller shall be entitled to require the buyer to provide adequate security for payment before effecting the delivery.  
If said security for payment is not provided or - to be decided by the seller - not satisfactory, the seller shall be entitled to defer fulfillment of (the rest of) his obligations under the contract by written notice.  
The seller shall then in no event be liable for any loss that the buyer may sustain as a result of said deferral.
3. An interest compensation shall be owed from the day of claimability on the amounts owed by the parties, equal to the interest rate used by the European Central Bank for its most recent basic refinancing transaction before the first calendar day of the six months concerned, increased with 7 percentage points.

### **Article 9. Retention of Title**

1. Any and all goods delivered by the seller to the buyer shall remain the exclusive property of the seller - even after and despite processing or treatment - until all the seller's receivables relating to goods delivered or to be delivered (under the contract) or activities performed or to be performed for the buyer (under such a contract) have been fully settled and until any receivables due to non-fulfillment of such a contract (including expenses and interest) have been fully settled.

2. Goods that are subject to a retention of title for the seller pursuant to paragraph 1 of this article shall in no event be sold and/or delivered to third parties, except as part of normal business operations. Nor may said goods be pledged for the benefit of third parties.
3. If the contract is cancelled by the seller and/or buyer and the goods are subject to a retention of title, the buyer shall place said goods immediately at the seller's disposal; the buyer shall not be entitled to set off any claims he may have on the seller or, based on such claims, defer his obligation to place said goods at the seller's disposal.

#### **Article 10. Premature Cancellation**

If any of the parties should default or continue to default on fulfilling any of their obligations towards the other party with regard to the term of delivery or credit term, or in the event of their moratorium, bankruptcy, death or liquidation, the other party shall be entitled to cancel the contract in whole or in part without any notice of default or intervention of the court by means of written notice being required, without prejudice to the right to claim damages and without prejudice to the provisions of article 11, paragraph 3.

#### **Article 11. Complaints and Liability**

- 1a The goods delivered shall meet any requirements that may reasonably be expected. If, upon delivery, an item delivered does not meet the standards set out in the contract because it displays a defect in quality and/or composition, any complaints about it shall only be taken into consideration if submitted to the seller in writing within four weeks of delivery.
- 1b If a defect only becomes apparent some time after delivery, the buyer may only invoke non-compliance of the item with the standards set out in the contract if he notifies the seller thereof within 5 working days after he has detected or reasonably should have detected said defect; in assessing whether and when a buyer reasonably should have detected a defect, the buyer's obligation to observe the standards of supervision and care dictated by practice and statutory regulations in respect of the storage of the goods shall be taken into account.
2. Without prejudice to the provisions of paragraph 1 of this article, the seller shall only have to take a complaint into consideration if the buyer has paid the relevant invoice or has placed the item in question at the seller's disposal.



3. If the item delivered proves not to meet the standards set out in the contract, the seller shall be entitled - if and in so far as the item delivered is still present and can still be taken back - to supply a substitute consignment within a maximum of 10 working days from the day on which the non-conformity was established. If the item in question cannot be taken back or if the substitute consignment does not meet the standards set out in the contract either, the buyer shall be entitled to cancel the contract with or without claiming damages or to retain the item delivered at a lower price to be set by means of arbitration if no agreement can be reached thereon.
4. Barring the seller's possible obligation to refund the paid purchase price or part thereof, the seller's liability for any damage sustained and/or yet to be sustained shall at all times be limited to the invoice amount of the goods supplied, even if the same have already been processed. The seller's liability for damage, direct or consequential, of any nature and origin whatsoever, sustained by the other party due to shortcomings in the goods shall never exceed the invoice amount of the delivery in question.
5. The buyer shall indemnify the seller from third-party claims, unless the buyer demonstrates that said claims are the direct result of actions or omissions on the part of the seller.

#### **Article 12. Sampling and Analysis**

1. The buyer may, at the time and site of delivery, have an attested sampler take samples in triplicate in the customary manner. The buyer and the seller may stipulate that said sampling be monitored. If the buyer and the seller fail to reach agreement on designating an attested sampler, the buyer shall undertake to have the samples taken by one of the following controlling authorities:
  - Qlip
  - SGS: Société Générale de Surveillance;
  - Bureau Veritas;
  - Caleb Brett.
2. Inspections of quality and/or composition shall be conducted in accordance with the methods prescribed by the COKZ at the time of the inspection if no other methods are agreed upon.
3. If no samples are taken at the time of delivery, sampling may take place at a later date. Assessment and analysis can then only provide an indication of the quality at the time and site of the delivery. The provisions of paragraphs 1 and 2 of this article shall apply mutatis mutandis to this sampling.

4. In the event of any disputes about quality and/or composition, one of the samples referred to in paragraph 1 or, as the case may be, paragraph 3 shall be subjected to an analysis by an accredited laboratory as soon as possible and in any event within seven days. The findings of the analysis shall be binding, without prejudice to each of the parties' right to demand a reappraisal within 10 working days of publication of the findings, which reappraisal shall consist of an analysis of a sample other than the one taken as specified in paragraph 1 conducted by an impartial laboratory that may be the same laboratory as hereinbefore referred to. The findings of the reappraisal shall be binding upon both parties. The associated costs shall be borne by the party ruled against as evidenced by the final findings of the analyses referred to.

### **Article 13. Delivery in Installments**

If delivery in installments is agreed upon, the called or delivered quantity shall be considered to constitute a separate contract in respect of the quality and other properties of the goods delivered as well as payment.

### **Article 14. Non-Imputable Shortcoming** ***(hereinafter referred to as 'Force Majeure')***

1. If either of the parties should be obstructed from fulfilling their obligations due to force majeure, they shall inform the other party thereof forthwith. The other party shall then have the option of extending the contract by a maximum of thirty days or cancelling the same in writing without any mutual obligation to pay compensation. As soon as the cause of force majeure ceases to exist within the extended period, the obstructed party shall be authorized to fulfill the contract in so far as it was not cancelled and to require the other party to fulfill their obligations under the contract.
2. If delivery in installments is stipulated, these provisions shall apply to each individual installment.

### **Article 15. Arbitration**

1. Any legal or factual disputes of any nature whatsoever that may arise between a seller and a buyer on account of or in relation to a contract governed by the 'MPC Conditions' or any other related contracts shall be brought before arbitrators to the exclusion of the ordinary judiciary and be governed by the 'MPC Arbitration Regulations'.
2. In the event of arbitration, the arbitrators shall make their decision in an equitable fashion with due care, to the exclusion of the ordinary court, on the basis of the 'MPC Conditions' and in compliance with the 'MPC Arbitration Regulations' as applicable at the time arbitration is petitioned.

**Article 16. Applicable Law**

Any and all contracts entered into by and between the parties shall be governed by the law of the Netherlands - to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods - in respect of which the 'MPC Conditions' and the 'MPC Arbitration Regulations' shall be considered to constitute an addition and, in so far as not dictated otherwise by mandatory provisions, a departure.

## **MPC CONDITIONS FOR THIRD COUNTRIES**

### ***for use outside the European Union***

adopted by the association Gemzu established in The Hague [the Netherlands]. These MPC Conditions shall commence on 1 April 2013 and shall be applicable to all agreements concluded on or after 1 April 2013.

If a contract is based on 'MPC Conditions' and states that either the loading port/site is located within the EU and the port/site of destination outside the EU or the loading port/site is located outside the EU and the port/site of destination within or outside the EU, the following terms and conditions shall apply, barring any other stipulations:

#### **Article 1. Confirmation of the Contract**

1. Confirmation by the seller shall serve as full proof of the contract, unless the buyer has filed a written objection to its contents within three working days of receipt.
2. If the seller has not confirmed the contract in writing within ten days of its conclusion, the buyer's confirmation shall serve as full proof of the contract, unless the seller has filed a written objection to its contents within three working days of receipt.

#### **Article 2. Quality and Composition**

The goods delivered shall at least satisfy the requirements for quality and composition as customary in the trade.

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

1. The packaging shall be provided with the brands and wording legally required in the country of origin. The packaging shall also feature the brands and wording that the buyer stipulated in writing upon inception of the contract.
2. The costs associated with meeting the requirements for packaging, labeling, stamping and palletizing established upon inception of the contract shall be borne by the buyer.

**Article 4. Instructions by the Buyer; Documents**

1. The buyer shall be obligated to issue his instructions for delivery fully and at such notice as to enable the seller to deliver within the agreed term, observing a call period of 28 working days.
2. If the buyer fails to issue his instructions on time, the seller shall be entitled to invoice the goods as of the last delivery day resulting from the purchase and demand payment as if the same had been supplied on said day, provided that he keeps said goods available for the buyer at the latter's expense and risk. In that event, the seller shall also be entitled to cancel the contract in accordance with Article 8 of the 'MPC Conditions'.
3. All costs caused by or resulting from the drafting and delivery of the required documents shall be borne by the buyer, unless the opposite is explicitly agreed upon.

**Article 5. Delivery**

The transport and delivery terms employed in quotations, contracts of sale or confirmations of purchase shall be interpreted in accordance with the description provided in the INCO terms applicable at the time of the contract, in so far as not otherwise provided in said documents and/or these conditions.

**Article 6. Payment; Security**

1. If no other payment condition is agreed upon, payment of the agreed price invoiced by the seller shall be effected upon delivery, without deduction of any remittance expenses.
2. Irrespective of any understandings between the seller and the buyer with regard to the credit terms, the seller shall be entitled to require the buyer to provide adequate security for payment before effecting the delivery. If said security for payment is not provided or - to be decided by the seller - not satisfactory, the seller shall be entitled to defer fulfillment of (the rest of) his obligations under the contract by written notice. The seller shall then in no event be liable for any loss that the buyer may sustain as a result of said deferral.
3. An interest compensation shall be owed from the day of claimability on the amounts owed by the parties, equal to the interest rate used by the European Central Bank for its most recent basic refinancing transaction before the first calendar day of the six months concerned, increased with 7 percentage points, or, if this is higher for the party to which the amount is owed, the legal default interest for trade transactions in the country of establishment of said party.

### **Article 7. Retention of Title**

1. Any and all goods delivered by the seller to the buyer shall remain the exclusive property of the seller - even after and despite processing or treatment - until all the seller's receivables relating to goods delivered or to be delivered (under the contract) or activities performed or to be performed for the buyer (under such a contract) have been fully settled and until any receivables due to non-fulfillment of such a contract (including expenses and interest) have been fully settled.
2. Goods that are subject to a retention of title for the seller pursuant to paragraph 1 of this article shall in no event be sold and/or delivered to third parties, except as part of normal business operations. Nor may said goods be pledged for the benefit of third parties.
3. If the contract is cancelled by the seller and/or buyer and the goods are subject to a retention of title, the buyer shall place said goods immediately at the seller's disposal; the buyer shall not be entitled to set off any claims he may have on the seller or, based on such claims, defer his obligation to place said goods at the seller's disposal.

### **Article 8. Premature Cancellation**

If any of the parties should default or continue to default on fulfilling any of their obligations towards the other party with regard to the term of delivery or credit term, or in the event of their moratorium, bankruptcy, death or liquidation, the other party shall be entitled to cancel the contract in whole or in part without any notice of default or intervention of the court by means of written notice being required, without prejudice to the right to claim damages and without prejudice to the provisions of Article 9, paragraph 3.

### **Article 9. Complaints and Liability**

- 1a The goods delivered shall meet any requirements that may reasonably be expected. If, upon delivery, an item delivered does not meet the standards set out in the contract because it displays a defect in quality and/or composition, any complaints about it shall only be taken into consideration if submitted to the seller in writing within six weeks of delivery.
- 1b If a defect only becomes apparent some time after delivery, the buyer may only invoke non-compliance of the item with the standards set out in the contract if he notifies the seller thereof within five working days after he has detected or reasonably should have detected said defect; in assessing whether and when a buyer reasonably should have detected a defect, the buyer's obligation to observe the standards of supervision and care dictated by practice and statutory regulations in respect of the storage of the goods shall be taken into account.

2. Without prejudice to the provisions of paragraph 1 of this article, the seller shall only have to take a complaint into consideration if the buyer has paid the relevant invoice or has placed the item in question at the seller's disposal.
3. If the item delivered proves not to meet the standards set out in the contract, the seller shall be entitled - if and in so far as the item delivered is still present and can still be taken back - to supply a substitute consignment within a maximum of 30 working days from the day on which the non-conformity was established. If the item in question cannot be taken back or if the substitute consignment does not meet the standards set out in the contract either, the buyer shall be entitled to cancel the contract with or without claiming damages or to retain the item delivered at a lower price to be set by means of arbitration if no agreement can be reached thereon.
4. Barring the seller's possible obligation to refund the paid purchase price or part thereof, the seller's liability for any damage sustained and/or yet to be sustained shall at all times be limited to the invoice amount of the goods supplied, even if the same have already been processed. The seller's liability for damage, direct or consequential, of any nature and origin whatsoever, sustained by the other party due to shortcomings in the goods shall never exceed the invoice amount of the delivery in question.
5. The buyer shall indemnify the seller from third-party claims, unless the buyer demonstrates that said claims are the direct result of actions or omissions on the part of the seller.

#### **Article 10. Sampling and Analysis**

1. The buyer may, prior to delivery, have an attested sampler take samples in triplicate in the customary manner. The buyer and the seller may stipulate that said sampling be monitored. If the buyer and the seller fail to reach agreement on designating an attested sampler, the buyer shall undertake to have the samples taken by one of the following controlling authorities:
  - Qlip;
  - SGS: Société Générale de Surveillance;
  - Bureau Veritas;
  - Caleb Brett.
2. Inspections of quality and/or composition shall be conducted in accordance with the methods prescribed by the COKZ at the time of the inspection if no other methods are agreed upon.
3. If no samples are taken at the time of delivery, sampling may take place at a later date. Assessment and analysis can then only provide an indication of the quality at the time and site of the delivery. The provisions of paragraphs 1 and 2 of this article shall apply mutatis mutandis to this sampling.

4. In the event of any disputes about quality and/or composition, one of the samples referred to in paragraph 1 or, as the case may be, paragraph 3 shall be subjected to an analysis by an accredited laboratory as soon as possible and in any event within fourteen days. The findings of the analysis shall be binding, without prejudice to each of the parties' right to demand a reappraisal within 10 working days of publication of the findings, which reappraisal shall consist of an analysis of a sample other than the one taken as specified in paragraph 1 conducted by an impartial laboratory that may be the same laboratory as hereinbefore referred to. The findings of the reappraisal shall be binding upon both parties. The associated costs shall be borne by the party ruled against as evidenced by the final findings of the analyses referred to.

#### **Article 11. Delivery in Installments**

If delivery in installments is agreed upon, the called or delivered quantity shall be considered to constitute a separate contract in respect of the quality and other properties of the goods delivered as well as payment.

#### **Article 12. Non-Imputable Shortcoming (hereinafter referred to as 'Force Majeure')**

1. If either of the parties should be obstructed from fulfilling their obligations due to force majeure, they shall inform the other party thereof forthwith. The other party shall then have the option of extending the contract by a maximum of thirty days or cancelling the same in writing without any mutual obligation to pay compensation. As soon as the cause of force majeure ceases to exist within the extended period, the obstructed party shall be authorized to fulfill the contract in so far as it was not cancelled and to require the other party to fulfill their obligations under the contract.
2. If delivery in installments is stipulated, these provisions shall apply to each individual installment.

#### **Article 13. Arbitration**

1. Any legal or factual disputes of any nature whatsoever that may arise between a seller and a buyer on account of or in relation to a contract governed by the 'MPC Conditions' or any other related contracts shall be brought before arbitrators to the exclusion of the ordinary judiciary and be governed by the 'MPC Arbitration Regulations'.
2. In the event of arbitration, the arbitrators shall make their decision in an equitable fashion as good men, to the exclusion of the ordinary court, on the basis of the 'MPC Conditions' and in compliance with the 'MPC Arbitration Regulations' as applicable at the time arbitration is petitioned.



**Article 14. Applicable Law**

Any and all contracts entered into by and between the parties shall be governed by the law of the Netherlands - to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods - in respect of which the 'MPC Conditions' and the 'MPC Arbitration Regulations' shall be considered to constitute an addition and, in so far as not dictated otherwise by mandatory provisions, a departure.

## **MPC ARBITRATION REGULATIONS**

applicable to any and all disputes that may arise between a seller and a buyer on account of or in relation to a contract governed by the 'MPC Conditions' - either those applicable inside the European Union or those applicable outside the European Union.

### **GENERAL**

#### **Article 1.**

1. Any disputes of any nature whatsoever that may arise between the parties, including those through whose mediation the contract is concluded, or their successors in title, on account of or in relation to the contract or a clause stipulated in addition thereto, on account thereof or in relation thereto, as well as on account of or in relation to any other contracts that may be the result of such a contract or such a clause, shall be settled by arbitrators with due care in an equitable fashion on the basis of the 'MPC Conditions' and according to the procedure outlined in the following articles.
2. The applicability of the 'MPC Arbitration Regulations' shall not prevent a party from requesting the ordinary court to issue an order to preserve justice or from applying to the Court in Interlocutory Proceedings, in accordance with Section 254 of the Code of Civil Procedure of the Netherlands.
3. The secretary of the Arbitration Board, as referred to in Article 4 of the MPC Arbitration Regulations, shall attempt to achieve an out-of-court settlement between the parties if at least one of the parties requests this from the same. Only in the event that both parties agree to an attempt at amicable settlement shall the costs be evenly divided. In any other event, the costs shall be borne by the applicant.
4. If the parties jointly request the secretary of the Arbitration Board, as referred to in Article 4 of the MPC Arbitration Regulations, to provide a binding advice, and if he agrees to do so, he shall give that binding advice with due care and diligence in all fairness. In that event, he shall generally charge the costs to the account of the party found to be at wrong, but he shall in all fairness take into account all circumstances that may constitute grounds to charge the costs in whole or in part to the other party's account.

## **APPOINTMENT OF ARBITRATORS**

### **Article 2.**

1. The board of management of Gemzu shall designate at least eight persons that may be appointed arbitrator.  
These persons shall be referred to as the Arbitration Board in the following articles. Ineligible for appointment shall be:
  - anyone who provides legal assistance by virtue of their profession;
  - anyone who has not been active in the dairy sector for more than three years.
2. The composition of the Arbitration Board shall be established by the board of management of Gemzu. The sitting members of the Arbitration Board shall be eligible for appointment for an indefinite number of times.
3. The seat of the Arbitration Board shall be at the offices of Gemzu. The secretariat of Gemzu shall act as secretariat of the Arbitration Board.

### **Article 3.**

1. The members of the Arbitration Board shall be authorized to handle any disputes brought before them as soon as they have been appointed arbitrators in a dispute.
2. If Gemzu should have been negligent in appointing members for the Arbitration Board to the extent that their number has dropped below five, the party taking the initiative shall be authorized to bring the dispute for which no arbitrators have yet been appointed before the ordinary court.

### **Article 4.**

1. The Arbitration Board shall have its office at the office of Gemzu, whose secretariat shall also act as the Arbitration Board's secretariat.
2. For each dispute that may arise, the Gemzu secretariat, in its capacity as secretary of the Arbitration Board (the secretary), shall appoint a lawyer practicing in the Netherlands.

## **COMMENCEMENT OF ARBITRATION**

### **Article 5 – Application; appointment of secretary**

1. The arbitration shall be requested in writing at the Gemzu secretariat, in five-fold, in a registered, dated letter with receipt. The arbitration will be deemed to have been opened on the day of receipt of the arbitration application by the secretariat of Gemzu.

The application should contain:

- a. Name and address of the defending party;
  - b. A short, clear description of the dispute;
  - c. As clear a description as possible of the claim.
2. As soon as possible after receipt of the application for arbitration, the Gemzu secretariat shall appoint as aforementioned in article 4.
  3. The secretary shall confirm receipt of the application for arbitration to the applicant as well as to the defending party, and send a copy of the application for arbitration to the defending party.

### **Article 6 - List procedure**

1. Simultaneously with the notification as referred to in article 5, paragraph 3, the secretary shall send each of the parties an identical list with the names of the persons who have been appointed by Gemzu to be possibly appointed as arbitrator, as aforementioned in article 2, paragraph 1.
2. Each party can state on the list, aforementioned under article 6 paragraph 1, at least three persons in precedence of the party's preference.
3. If the secretary has not received the list back within 14 days of having sent it, it will be assumed that all persons on the list are equally acceptable as arbitrator to that party.
4. As soon as possible after the list has been returned, respectively after expiry of the term as stated in article 6 paragraph 3, the secretary, taking the preferences expressed by the parties into account as much as possible, shall appoint two persons from the list to act as arbitrator.
5. If a person cannot or will not accept the secretary's invitation to act as arbitrator, respectively cannot act as arbitrator for any other reason, the secretary shall be entitled to directly appoint one or more other person on the list, as referred to in article 6 paragraph 1, to act as arbitrator.

6. The appointed arbitrators shall inform the secretary, within seven days, who shall act as the third arbitrator, chosen from the Arbitration Board, who shall also act as chairman of the arbitrators. If both arbitrators cannot agree on the choice of arbitrator, the secretary shall appeal to the board of management of Gemzu to request them to appoint a person from the Arbitration Board to act as third arbitrator and as chairman.

**Article 7 – Letter of appointment; acceptance of assignment; notification of appointment to parties**

1. The appointment of the arbitrators, in accordance with the conditions in article 6, shall be confirmed by the secretary in a letter of appointment addressed to the arbitrators.
2. An arbitrator shall accept his appointment in writing. It is sufficient for this acceptance to sign and return a copy of the letter of appointment to the secretary.
3. Simultaneously with the sending of the letter of appointment to the arbitrators, the secretary shall inform the parties in writing of the appointment.

**Article 8 – Substitution of an arbitrator**

1. If an appointed arbitrator for whatever reason cannot or can no longer act as such, the secretary shall appoint another arbitrator in accordance with article 6, paragraph 5.  
If the resignation of an arbitrator also terminates the charges of the other arbitrators, these arbitrators shall be considered to be reappointed.  
If the substitution took place after the notification referred to in article 7 paragraph 3 had already been sent, an updated notification shall be sent to both parties. If this could not be realized in time before the hearing and one or both parties could not be represented at the hearing, this party/those parties should be notified in writing forthwith after the hearing.
2. During the substitution, the action is legally suspended. After the substitution the hearing of the action, which had already commenced, is resumed, unless the Arbitration Board considers that there are conditions for a full or partial rehearing of the action.

**Article 9 – Challenge of an arbitrator**

1. If a party wishes to challenge an arbitrator, it should notify the arbitrator concerned, the other party, the secretary and the co-arbitrators thus in writing, within one week after receipt of the notification as referred to in article 7 paragraph 3, respectively within one week after the reason for the challenge has become apparent.

This letter should contain the following, otherwise it is null and void:

- a. The name/names of the challenged arbitrators;
  - b. The reasons of the challenge.  
Other reasons than those mentioned in the letter shall not be considered.
2. Challenging arbitrators can take place according to the legal reasons thereto and also based on the following:
    - a. that the arbitrator is a partner in, or in any manner employed in the company of one of his co-arbitrators or of one of the parties;
    - b. that the arbitrator is or has been involved in the dispute in another manner (e.g. as expert);
    - c. that there is an arbitration pending between the arbitrator, his spouse, their relations by blood or marriage in a direct line, and one of the parties, all of this irrespective of these reasons occurred before or after the appointment of the arbitrators.
  3. If the challenge does not take place in accordance with the conditions in article 9 paragraph 2, the grounds of the right to challenge shall expire afterwards, in the arbitration proceedings or in the Court.
  4. The proceedings can be suspended by the secretary from the day of receipt of the notification of the challenging party.
  5. If a challenged arbitrator withdraws, this shall not mean that the basis of the reasons for the challenge is accepted.
  6. If a challenged arbitrator does not withdraw within fourteen days after the day of receipt of the notification of the challenging party, the reasons for the challenge shall be decided on by the Court in Interlocutory Proceedings, at the request of either party. If this request is not submitted within four weeks after the day of receipt of the notification of the challenging party, the right to challenge expires and the proceedings, if these were suspended, shall be resumed as it was.
  7. If the challenged arbitrator withdraws or if the Court in Interlocutory Proceedings finds that this challenge is well-founded, this arbitrator shall be substituted according to the rules which were applicable to his original appointment, unless the parties have agreed to another manner of substitution.
  8. If the arbitrator involved, one of the parties or both parties are domiciled or residing outside The Netherlands, the terms referred to in this article shall be doubled.

## **HANDLING OF THE ARBITRATION**

### **Article 10 – Arbitration records; sending of documents and notifications**

1. Simultaneously with the sending of the letter of appointment referred to in article 7 paragraph 1, the secretary shall send the arbitration records to the arbitrators.
2. After the records have been sent, the parties shall send their notifications and other documents for the arbitrators directly in quadruple copy to the secretary. A copy of each notification or document shall be sent simultaneously to the other party. A copy in quadruple of each notification or document for the other party shall be sent to the secretary.

### **Article 11 – Location of arbitration**

1. The location of the arbitration is The Hague in the Netherlands.
2. Arbitrators can meet in session, consult, hear witnesses and experts at any other locations they consider suitable.

### **Article 12 – Proceedings in general**

1. Arbitrators shall ensure that the parties are treated equally. They shall provide each party with the opportunity to stand up for their rights and to express their statements.
2. Arbitrators shall determine in which manner and within which terms the proceedings are held, taking into account the conditions of these Arbitration Regulations and the circumstances of the arbitration. They shall also decide on applications for indemnification and/or intervention and/or joinder, also if that case would normally not be within the competence of the arbitrators.
3. Arbitrators shall ensure an expeditious progress of the proceedings. They are competent, at the request of a party or on their own initiative, to prolong a term determined by them.
4. At the request of a party or on their own initiative, arbitrators can, after receiving the arbitration records, respectively at a later stage of the proceedings, meet with the parties to discuss the progress of the proceedings and/or the actual and legal points of the dispute.

5. The arbitration proceedings shall be conducted in the Dutch language, except if one of the parties is domiciled or residing outside The Netherlands and is not able to speak Dutch. In that case, the arbitration proceedings shall be conducted in the English language, to be assessed and determined by the arbitrators. The documents submitted by the parties, at the charge of the arbitrators, shall then be translated by a sworn translator in the English and/or Dutch language. The costs for this shall in principle be for the applicant, to be assessed and determined by the arbitrators, where the arbitrators in all fairness, taking into account all circumstances, can decide to charge the costs, wholly or partially, to the other party.
6. The parties can appear in person or let themselves be represented by an authorized person, provided this person has a proper power of attorney.

### **Article 13 – Hearing; exchange of pleadings**

1. In the notification, referred to in article 7 paragraph 3, the secretary shall ask each of the parties if they wish for an immediate hearing of the dispute or if they wish to elucidate the dispute in advance in writing.
2. If both parties wish a hearing, the date thereof shall be determined by the arbitrators forthwith and the parties shall be informed thereof.
3. If (one of the) parties wish to elucidate the dispute in writing, the arbitrators shall determine as soon as possible before which date the applicant can substantiate its demand as referred to article 5 paragraph 1, and within which term the defending party can react to this, with possible further terms for reply and rejoinder. The starting point shall always be a three week term. Arbitrators can, however, determine a different term.
4. The defending party appearing in the arbitration proceedings, who wishes to appeal to the incompetence of the Arbitration Board, shall institute this appeal for all defenses, on punishment of the revoking of the right thereto, in the arbitration proceedings or in Court.
5. Each of the parties shall submit their conclusions to the secretary in fivefold, who shall submit one copy thereof to the other party and one copy to each of the arbitrators.
6. After the terms referred to in article 13 paragraph 3, or if both parties have stated to waive their right to elucidate an opinion in writing, the secretary shall notify both parties in writing of the location and time of the session for the hearing of the dispute.



7. If necessary, arbitrators can hold more than one session, of which the secretary will inform the parties or their authorized persons in writing. Arbitrators can order the parties to bring or call witnesses, and can also call witnesses themselves. Arbitrators can also order an expert report to be drawn up.
8. In each stage of the proceedings, arbitrators can order the personal appearance of the parties to provide information, respectively to attempt an amicable settlement. They are also competent to order certain documents relevant to the dispute.
9. Parties are obliged, concerning the arbitration, to provide the arbitrators with all required data and information and to follow their written or oral instructions.
10. All hearing of examinations and statements shall take place during the session, except for exceptional circumstances, to be assessed by the arbitrators.

#### **Article 14 – Counterclaim**

1. The defending party can, no later than in its reply, or, if this is lacking, no later than at the first session, institute a counterclaim, provided that claim is the result of the same agreement as the claim in the main action or directly connected thereto.
2. If the counterclaim is the result of another agreement concluded under MPC Conditions, a separate arbitration shall have to be requested for that. However, the application can be submitted that this claim is placed in the hands of the arbitrators who will decide on the claim instituted in the main action.  
In both cases the arbitrators shall decide if the counterclaim is to be handled simultaneously with the original claim or completely separately.
3. If there is a simultaneous handling, arbitrators can demand that the party instituting the counterclaim makes the payment as referred to in article 18 paragraph 2.

#### **Article 15 – Nonappearance**

1. If the applicant is not present or represented at the first session, or if the applicant is in default to submit a further explanation of its claim, arbitrators can rule to terminate the proceedings, unless the defending party agrees to consider the application for arbitration withdrawn.
2. If the defending party is not present or represented, and has not notified the arbitrators of its defense, the claim shall be allowed, unless the arbitrators consider that the claim is unjustified or unfounded, or that conditions are present to maintain the arbitration.
3. The conditions of this article apply accordingly to the counterclaim referred to in article 14.

### **Article 16 – Withdrawing the arbitration**

1. An arbitration can be withdrawn by the applicant under the following conditions.
  - a. If an arbitration is withdrawn before the arbitrators have commenced their duties, the applicant shall owe an amount of € 250.00 (excl. VAT) to Gemzu funds, as well as payment of possible costs already incurred.  
If the arbitrators had already called the parties the amount is the previous sentence is increased to € 300.00 (excl. VAT), as well as payment of possible costs already incurred.
  - b. If an arbitration is withdrawn less than 24 hours before the time for the handling determined by the arbitrators, the applicant shall pay an amount of € 750.00 (excl. VAT), as well as payment of possible costs already incurred.
  - c. If an arbitration is withdrawn during the hearing, the full arbitration costs shall be owed.
2. A party can only withdraw the arbitration after a defense has been presented, if the other party states in writing to agree to this.
3. Gemzu can grant full or partial exemption of payment of the aforementioned amounts, if special circumstances dictate this.

### **Article 17 – Ruling**

1. The arbitrators shall rule with due care in all fairness, based on the Gemzu conditions. They shall rule as soon as possible, but they are obliged to rule within six months after the date of the first session of the arbitration concerned. However, they are entitled, if dictated by special circumstances, to extend the duration of their duties.
2. Arbitrators shall rule by a majority of votes, and shall not express the opinion of the minority. They shall draw up and sign a motivated ruling of their decision in four copies, except for the conditions in article 1057 of the Code of Civil Procedure of The Netherlands. The secretary, referred to in article 4, shall ensure that, as soon as possible:
  - a. a copy of the ruling, signed by the arbitrators and the secretary, is sent by registered mail simultaneously to both parties;
  - b. the original of a partial or full final ruling is deposited at the Registry of the Court in whose District the place of arbitration is located;
  - c. the fourth copy shall be sent to the Gemzu secretariat, where it shall remain in the archives.
3. The Gemzu secretary can notify (have notified) third parties of the ruling and/or publish (have published) the ruling, taking into account the anonymity of the parties.

### **Article 18 – Administration costs**

1. The applicant shall owe the secretariat of Gemzu a fixed amount of € 750.00 (excl. VAT) for administration costs at the commencement of the arbitration.
2. If the defending party institutes a counterclaim, this party shall also owe € 750.00 (excl. VAT) for administration costs.
3. The Gemzu secretariat shall ensure collection of the amounts owed.

### **Article 19 – Costs of arbitrators**

1. The arbitrators shall determine their traveling and accommodation costs incurred for the arbitration, such as the secretary's salary and the costs of the expert's report possibly ordered by the arbitrators.
2. The arbitrators' fee shall be € 275.00 (excl. VAT) for each part of the day on the days they are holding sessions.
3. The amounts referred to in this article shall be included in their ruling by the arbitrators.
4. The secretary is entitled, simultaneously with the payment of the administration costs by both parties or only the applicant, to demand a deposit payment, from which the advances and the arbitrators' fees shall be paid as much as possible. The secretary can demand a supplement to the deposit payment at all times.

### **Article 20 – Costs of arbitration**

1. The 'costs of arbitration' shall be costs aforementioned in the previous three articles, as well as all other costs required, in the opinion of the arbitrators, for the arbitration. Costs of legal assistance of the parties, except in special circumstances, to be determined by the arbitrators, shall be to the account of the party that requested legal assistance.
2. In their ruling, the arbitrators shall determine the costs of arbitration up to and including depositing the ruling at the Court Registry.
3. When sentencing the arbitration costs, the arbitrators shall take into account the deposit payment paid, according to the previous article. To the extent that this is used to the account of the party in whose favor the ruling was, the other party is sentenced to pay this amount to the party in whose favor the ruling was.

**Article 21 - Final stipulations**

1. If 'working days' are included in these Arbitration Regulations, this shall not include the Saturdays.
2. If actions were taken contrary to one of the conditions of these Arbitration Regulations, and if a party did not object to this with the Arbitration Board, within six days after this became known to this party, the party is considered to have waived its right to appeal to this inconsistency.



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