

**ADDITIONAL TERMS AND CONDITIONS OF SALE OF RAPESEEDS MEAL  
FROM MAGDEBURG PLANT – version July 2021**

These Terms and Conditions of Sale of Rapeseeds Meal apply to all agreements between Viterra B.V. ("THE SELLER") and a customer ("Purchaser") for the sale and delivery of rapeseeds meal from THE SELLER ("Goods").

**SECTION 1 – GENERAL**

1.1 The Purchaser acknowledges that all existing and future purchase agreements for Goods shall be governed by these Terms and Conditions of Sale of Rapeseeds Meal ("the Conditions"). Any separate purchase conditions of the Purchaser are expressly not acknowledged by THE SELLER. The same shall apply to sales conditions of commercial agents.

1.2 In case of discrepancy between these Conditions and any special terms and conditions referred to in the written sales confirmation the latter shall prevail.

**SECTION 2 – DELIVERY**

2.1 Delivery shall be made within the agreed delivery period at a time chosen by THE SELLER. THE SELLER shall provide the detailed delivery time schedule which shall be strictly observed by the Purchaser. Unless otherwise agreed THE SELLER shall provide weekly delivery schedules which shall be notified to the Purchasers latest on Friday of the week preceding the delivery week.

In the absence of providing the weekly schedule of deliveries by THE SELLER, the Purchaser is obliged to pick up during the week for which the delivery schedule is missing 25% of monthly volume as agreed in the sale confirmation.

2.2. Additional requirements for barges:

In case the Goods are to be loaded on barges the Purchaser is obliged to:

- (i) Notify latest on 15<sup>th</sup> calendar day of the month preceding the month during which the barges are to be presented its plan of presenting barges during entire month; such plan needs to be accepted by the Seller,
- (ii) Each barge included in the monthly plan shall be then:
  - a) Pre-advised by the Purchaser to the Seller 5 working days prior her arrival date; and
  - b) Notified to the Seller by the Purchaser by way of sending Notice of readiness 3 working days prior her arrival date;

Barge Loading conditions:

- (i) 24 hours - weather working conditions (sshex)
- (ii) Loading rates and all other details as per "Verordnung über den Lade – und Loschtag sowie die Lade – und LOSchzeiten in der Binnenschifffahrt" as of 26<sup>th</sup> January 1994 and with further amendments - attached hereto.

2.3 The Purchaser is obliged to present the transport means as per the weekly delivery time schedules requested by THE SELLER as per item 2.1 and 2.2 above.

In case the weekly delivery time schedules and/or the entire delivery period of particular sale/purchase contract are not properly executed by the Purchasers, THE SELLER shall be entitled (at its own discretion) to:

- a) either grant the Purchaser the grace period appropriate for picking up the outstanding balance of weekly schedule or entire contractual period and claim damages for delay in performance; or
- b) load the cargo balance not executed by the Purchaser on the appropriate transport means and put such cargo at the disposal, risk and cost of the Purchaser and the Purchaser is obliged to accept it; or

- c) to terminate the contract entirely or the part not yet performed or the weekly part that is not executed on time and claim damages at any time.

In case option (a) above is chosen by THE SELLER, THE SELLER is entitled to postpone delivery for next periods by the same number of working days as the Purchaser was in delay in addition to a reasonable period for making appropriate arrangements.

2.4. The periods of grace as referred to in item 2.3. a) above shall be:

- (i) at least two (2) working days in case the Purchaser is in delay in picking up 100 tons of rapeseeds meal
- (ii) at least three (3) working days in case the purchaser is in delay in picking up 250 tons of rapeseeds meal
- (iii) at least five (5) working days in case the purchaser is in delay in picking up more than 1 000 tons of rapeseeds meal

2.5. If THE SELLER claims damages as per Clause 2.3 above the value of not executed Goods shall be the value of the goods established by a broker nominated by the chairman of the .Verein der Getreidehändler der Hamburger Börse e.V. or his designated representative taking account of the regulations governing the execution of covering transactions and price fixings published by the Board of the .Verein der Getreidehändler der Hamburger Börse e.V. and to demand from the defaulting party the resulting price difference and the costs incurred for having the price established.

The settlement date is to be the first business day following the day on which the Purchaser was in default or, in case grace period is granted - the day after expiry of the grace period.

2.6 THE SELLER shall make every effort to adhere to the agreed dates and times of delivery. However, THE SELLER shall be released from adherence to contractual delivery dates and periods to the extent that and as long as circumstances occur, either in the point of origin or point of delivery, which substantially impede performance ("substantial impediment to performance"). All difficulties, irrespective of their nature, the sphere and segment of the supply chain in which they occur, such as force majeure and acts of God, export and import restrictions, appropriate laws significant changes problems in procuring commodities, disruptions of operations (including but not limited to breakdown of machinery, fire, etc.), strikes or any similar actions, states of emergency or loading and transportation difficulties are deemed to be substantial impediments to performance.

2.7. In the event of a substantial impediment to performance under Clause 2.6. THE SELLER is entitled to (i) rescind the contract with immediate effect without damages or (ii) extend the agreed delivery period by the duration of such impediment and the time required to make adjustments to production schedules as a consequence thereof by up to five (5) months ("extension period"). THE SELLER shall be entitled but not obliged to supply goods equivalent to those contractually agreed or to replace failed deliveries with third-party goods of equal value within the extension period. After expiry of the extension period, the contract may be rescinded at the request of either party. If continuation of the contract appears unreasonable for either party before the extension period has expired, that party may rescind or terminate the contract. THE SELLER shall notify the Purchaser of the duration of the extension period.

### **SECTION 3 – LOADING**

3.1 Loading time. The loading of the Goods shall be performed within the working hours specified by THE SELLER which shall be advised to Purchaser before receipt of delivery. All costs arising from delays in loading for which THE SELLER is not responsible such as demurrage and transport costs shall be borne by the Purchaser. In other respects the respective terms of delivery agreed from time to time shall apply.

3.2 Purchaser's acceptance of Goods. If the Goods are loaded onto vehicles provided by the Purchaser, the loading is to be effected within the working hours specified by THE SELLER in accordance with operational requirements and, if necessary, also in several shifts. If the Purchaser is unable to provide its own crew for loading operations in accordance with operational requirements, THE SELLER shall endeavor to make professional staff available for this purpose at the Purchaser's

expense. The loading of barge shall be effected in accordance with local practice.

3.3 Acceptance of Goods by third parties. The Purchaser has the right to appoint its forwarder/agent and shall notify it to the Seller one week prior barge's arrival to the loading place. In such a case the bills of lading/consignment notes issued to "order" or endorsed in blank shall be handed to THE SELLER upon request.

3.4 Suitable means of transportation. Unless otherwise specified in the respective terms of delivery, the Purchaser shall be responsible for the provision of suitable means of transport at the time of acceptance of the Goods. The means of transport shall only be deemed to be suitable if it meets all statutory requirements and any other regulation at the time of loading, throughout the transit period and during unloading. THE SELLER is entitled to reject a means of transport deemed to be unsuitable and to effect delivery by third-party means of transport at the Purchaser's expense.

#### **SECTION 4 – QUALITY, WEIGHT, SAMPLING**

4.1 No warranty of properties. The Goods delivered by THE SELLER shall be of merchantable quality. The warranty of a specific property shall only be deemed to apply if such property has been expressly guaranteed in writing by THE SELLER.

4.2 Permissible weight fluctuations. In the sale/ purchase contract the volume is determined as "ca ..... Number of tons". The word "ca" shall always mean +/- 2 % in the Sellers option and at contract price . The Sellers are not obliged to declare which option is chosen either before or at any time during such sale/purchase contract execution.

4.3 Rules relating to sampling. Sampling shall only be performed at the place of loading. Quality shall be determined by the Sellers' laboratory at their own costs and discretion. Such quality is final and binding upon the parties.

#### **SECTION 5 – NOTICE OF DEFECTS**

5.1 Duty of inspection and notification. The recipient shall carefully inspect the Goods immediately prior to acceptance/acknowledgement of receipt thereof. In the event of a claim, THE SELLER shall immediately (within maximum 3 working days after arrival date to first destination) be notified in writing or by facsimile with a detailed statement of reasons. Such notification shall be accompanied by quality analyses prepared by the independent laboratory. The Goods in question must be retained in their means of transport on site to enable THE SELLER to assess whether the claim is justified.

5.2 Replacement delivery. Should the claim be justified and raised in due form within the given period, THE SELLER is entitled in the first instance to take back the defective Goods and replace them with goods conforming to the contract. If THE SELLER fails to effect replacement delivery, the Parties will settle the claim amicably . The time limit for these claims is 2 months after delivery of the Goods, even if possible defects are only detected at a later date.

5.3 Processing and reshipment. Before commencing processing, the Purchaser shall determine whether the delivered Goods are suitable for their intended purpose, particularly for subsequent processing purposes. Once the delivered Goods are discharged from means of transport originally presented for loading at SELLER's loading place they shall be deemed to have been approved by the Purchaser as complying with the contract. Any warranty claims – in particular, claims for damages – shall be excluded thereafter.

#### **SECTION 6 – LIABILITY**

6.1 Extent of liability. In the event of any breach of duty – irrespective of whether such breach is based on a pre-contractual, contractual or non-contractual duty – THE SELLER shall only be liable for damages and reimbursement of costs in the event of intent or gross negligence, subject to any other contractual or statutory conditions precedent to liability. THE SELLER shall in no event be held liable for any damage caused by vicarious agents.

6.2 Limitation of liability. Except in the case of intent, THE SELLER's liability is limited to loss or damage which was foreseeable at the time the contract was concluded up to a maximum amount

equivalent to the purchase price agreed with THE SELLER. THE SELLER's liability for loss or damage caused by delay is limited to a maximum of 5% of the purchase price agreed with THE SELLER.

6.3 Consequential loss or damage. Except in the case of intent and or gross negligence , liability for indirect and consequential loss or damage in particular loss of profit, is excluded.

6.4 Limitation of time. All claims for damages against THE SELLER shall lapse no later than 7 days after the Goods have been delivered to the Purchaser. Any shorter statutory limitations periods shall take precedence.

6.5 Set-off by THE SELLER. The Purchaser agrees that THE SELLER may apply by way of set-off an amount equal to any monies or other liability owing from time to time by the Purchaser or any member of the Purchaser's group to THE SELLER against any monies or other liability owing by THE SELLER to the Purchaser.

## **SECTION 7 – PRICES AND TERMS OF PAYMENT**

7.1 Increase in prices. THE SELLER is entitled to increase the price retroactively to reflect additional prime costs such as higher levies and energy costs or insurance premiums as well as hardship allowances (e.g. in the event of flood/low water or ice).

7.2 Carriage paid. Unless expressly agreed otherwise, e.g. in the respective terms of delivery, the Purchaser shall bear any additional freight costs as well as specific packaging costs that go beyond standard packaging, incidental charges, public levies and customs duties.

7.3 Taxes. All agreed prices shall be exclusive of any tax, i.e. the current energy and value added tax as well as any other applicable taxes and duties shall be paid by the Purchaser in addition to the agreed prices.

7.4 New obligations. Should any further-reaching or new obligation of any kind, affecting the terms of the contract, be imposed on THE SELLER by sovereign or official regulations after conclusion of the individual contract, the consequences and additional costs form part of the contract and shall be assumed by the Purchaser vis-à-vis THE SELLER.

7.5 No discount. In the case of deliveries of the Goods subject to tax, levies or similar charges, the respective amount of tax or levy shall be paid net, i.e. without a discount being granted.

7.6 Due date. The Purchaser shall be deemed to be in default without a reminder if it fails to effect payment when due.

7.7. Default interest. Default interest may be charged at the rate of 12% pa. THE SELLER may assert claims for further loss or damage.

## **SECTION 8 – RIGHTS OF THE SELLER**

8.1 Refusal of performance. THE SELLER may at its own discretion refuse performance under the contract or request prepayment for the Goods to be shipped, if:

(i) the Purchaser falls into arrears with the acceptance of a delivery or payment under this contract or any other contract concluded with THE SELLER's affiliated company,

(ii) the Purchaser's company is liquidated or transferred to a competitor of THE SELLER;

(iii) the credit limit for the deliveries provided by THE SELLER is exceeded.

In all or any of such situations THE SELLER may terminate the contract or the part thereof not yet performed without any liability for damages. The Sellers are entitled to claim all damages and losses incurred as a result of above.

8.2 Assignment. THE SELLER is entitled to assign contractual rights and obligations to another company in THE SELLER Group.

## **SECTION 9 – RETENTION OF TITLE**

9.1 Retention of title. For any deliveries made by THE SELLER under these Conditions THE

SELLER holds the title to the Goods delivered till the Goods are fully paid by the Purchaser as well as there are no outstanding payment obligations of the Purchaser towards THE SELLER from any other titles/contracts etc. In case of sale on credit the retention of title to the Goods constitutes the collateral of any unpaid balance to THE SELLER.

Retention of title under this clause shall continue to apply where the Goods under retention of title undergo treatment or processing. In the event that the Goods under retention of title are processed, combined and mixed with other materials by the Purchaser, THE Purchaser will transfer on THE SELLER the ownership or co-ownership of the new products and will store these products on THE SELLER's behalf free of charge.

9.2 Re-sale by Purchaser. The Purchaser may only re-sell, process or mix the Goods under retention of title with other materials in the ordinary course of its business and if it is not in default. If payment of the purchase price by the customer is deferred the Purchaser is obliged to notify its customer about THE SELLER's title to the Goods.

9.3 Assignment and collection of claims. In the event of re-sale of the Goods under retention of title, the Purchaser hereby assigns to THE SELLER as security claims for sums due to the Purchaser from the re-sale – where THE SELLER co-owns the Goods under retention of title till final payment for the Goods i.e. till the all sums invoiced by THE SELLERS are entirely paid.

9.4 Duty of notification. At THE SELLER's request the Purchaser is obliged to inform its customers about assignment of rights as per clause 9.3 above as well as to provide THE SELLER with all information required for proper execution of THE SELLER's rights i.e. names, addresses of the customers etc. THE SELLER is hereby authorized to notify the Purchaser's customers itself. The Purchaser may in the name of THE SELLER commence execution legal proceedings against its customers. In case however the customers fulfill their payment obligations assigned on time THE SELLER may at any time withdraw the authorization given to the Purchaser (the authorization to commence legal execution).

9.5 Default in payment. In case the Purchaser is in default of any payment due to THE SELLER and/or the Purchaser's economic situation deteriorated, THE SELLER has the right to take back the Goods covered by the retention of title. In case THE SELLER executes its right of taking back the Goods it shall constitute the SELLER's notification of partial respective sale contract termination (such termination concerns the Goods taken back). The Purchaser is obliged to enable THE SELLER free access to the place where the Goods are stored and enable him to take back the Goods. All costs of such operation are for the Purchaser's account.

## **SECTION 10 – FINAL PROVISIONS**

10.1 Place of performance. The place of performance for delivery and payment shall be the seat of THE SELLER.

10.2 Applicable law. These Conditions and all contracts concluded basis them shall be governed by German laws. The provisions of Convention on International Sale of Goods are excluded.

10.3 Place of jurisdiction. Any disputes arising from or in connection with contracts to which the Conditions apply shall exclusively be settled in the courts having jurisdiction at THE SELLER company's domicile. 10.4 Severability. If at any time any provision of the Conditions is or becomes invalid this shall not affect the validity or enforceability of the remaining provisions. In this case, the provision in question shall be replaced with a provision with a similar economic effect to that intended by the parties.

10.5. These conditions have been prepared in two languages - German and English. In case of discrepancies between the two versions, English version shall prevail.

## **SECTION 11 – VITERRA COMPLIANCE CLAUSE**

11.1 General Compliance Clause:

The parties warrant, represent and undertake to each other, that they will comply with all applicable

laws, rules and regulations including without limitation sanctions, anti- corruption, anti-money laundering and tax laws in performing this Contract.

#### 11.2 General Sanctions Clause:

The parties represent, warrant and undertake to each other that:

(a) neither they nor any of their subsidiaries (collectively, the "Parties") or directors, senior executives or officers, or to the knowledge of the Parties, any person on whose behalf the Parties are acting in connection with the Contract, is an individual or entity ("Person") that is, or is 50% or more owned or controlled by, a Person (or Persons) that is the subject of any economic or financial sanctions or trade embargoes administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") the U.S. Departments of State or Commerce, the United Nations Security Council ("UNSC"), the European Union ("EU"), or other applicable sanctions authority (collectively, "Sanctions") (collectively, a "Sanctioned Person");

(b) no Sanctioned Person has any beneficial or other property interest in the Contract nor will have any participation in or derive any other financial or economic benefit from the Contract,

(c) they will not use, or make available, the Commodity or funds (as applicable) provided the other party in terms of the Contract to fund or facilitate any activities or business of, with or related to any Sanctioned Person, or in any manner that would result in a violation of Sanctions, and

(d) they will not use or make available the Commodity or funds (as applicable) provided by the other party in terms of the Contract to fund or facilitate any activities or business of, with or related to any country or territory that is the subject of comprehensive (i.e., country-wide or territory-wide) Sanctions (including, as of the date of signature of this contract, Crimea, Cuba, Iran, North Korea and Syria) (a "Sanctioned Country"), unless such activity complies with all applicable Sanctions and does not place either party in violation of Sanctions. The Buyer will inform the Seller immediately, but latest prior to commencement of loading/prior to shipment, about any sale to a Sanctioned Country.

Seller represents and warrants that the Commodity has not originated or come from or through any Sanctioned Country.

Without prejudice to its other rights under this clause, in order to ensure compliance with Sanctions, the Seller may, without prejudice to any other rights, require payment in Euro, exchange rate to be used will be the Bloomberg Fixing or another mutually agreed USD/EUR exchange rate, two business days prior to the payment date , unless

it is proven to Seller's satisfaction that the transaction is covered by a valid OFAC licence. Likewise, the Buyer may also require to pay in EURO.

If either party is of the reasonable opinion that the other party has breached this clause, it may (without incurring any liability of any nature to the other party whatsoever) terminate or suspend all or any part of the Contract with immediate effect by notice to the other party or take any other action it deems necessary in order for it to comply with applicable sanctions. The other party shall be liable for any and all costs, liabilities and expenses whatsoever incurred by it due to exercising its rights under this clause.

#### 11.3 Vessel Compliance Clause

The parties warrant and represent that it will not nominate and/or appropriate any vessel in the performance of their obligations under this Contract in violation of US sanctions, European Union sanctions or any other applicable sanctions (hereinafter, "Sanctions") or which would put either party in breach, or under designation risk, of Sanctions.

Parties will have the right to reject any nomination and/or appropriation which (a) violates any Sanctions, (b) puts either party in breach, or under designation risk, of any Sanctions, or (c) otherwise involves a vessel that is the subject of any Sanctions (including, but not limited to, vessels

that are the subject of Sanctions due to ownership or country of registration, or that appear on any Sanctions list), by serving a rejection notice on the other party detailing the grounds for the rejection. Service of such notice shall not constitute a breach of this Contract and parties shall not be liable to the other party for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such rejection. If parties reject a nomination and/or appropriation on these grounds they shall be entitled, at their sole discretion, to (i) require the other party to promptly nominate and/or appropriate a suitable substitute vessel; or (ii) terminate this Contract.

To the full extent permitted by applicable law, the parties shall indemnify each other against any and all costs, expenses, losses and liabilities it incurs as a result of the other party nominating and/or appropriating a vessel in breach of this clause.

Any exercise by the party of its right under this clause shall be without prejudice to any other rights or remedies of it under the Contract.