

# **General Trading Conditions (2020)**

**and  
Dispute Settlement and**

**Arbitration Rules**

**of**

**Stichting Nederlandse Zuivelbeurs**

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**GENERAL TRADING CONDITIONS (2020)**  
**and**  
**Dispute Settlement and Arbitration Rules of**  
**Stichting Nederlandse Zuivelbeurs**  
**with its registered office in The Hague**

These General Trading Conditions consist of:

- I the Trading Conditions, applicable between the affiliated companies;
- II the Dispute Settlement and Arbitration Rules, which contain
  - A: an amicable settlement phase; and
  - B: the arbitration procedure.

These conditions may be cited as the "General Trading Conditions of Stichting Nederlandse Zuivelbeurs".

**I THE TRADING CONDITIONS**

**Chapter 1 General**

(Provisions applicable to purchase and provision of services)

**APPLICABILITY**

**Article 1.**

1. These Trading Conditions apply to all quotations, agreements and offers of affiliated companies regarding cheese, in the broadest sense of the word.
2. If the cheese on the basis of the agreement is not delivered as a whole but in parts at different times, each delivery is individually subject to these Trading Conditions.

**DEFINITIONS**

**Article 2.**

The definitions below apply in these Trading Conditions.

"cheese"	the cheese product - both packaged and unpackaged - as currently defined in section 1(e) (and (f) of the Agricultural Quality (Dairy Products) Decree (7 July 1998, Bulletin of Acts and Decrees 453), as well as products analogous to cheese products, which in any case means cheese-like products in which the milk fat has been replaced by vegetable fats.
"custody"	the entry of cheese into the cheese storage on behalf of third parties, the keeping of cheese in the cheese storage facility, the treatment and/or processing of cheese in the cheese storage facility and/or related area and the removal of cheese from the cheese storage facility. This also includes a sale transaction in which parties have simultaneously agreed that the same batch of cheese will be sold back unprocessed and delivered by the buyer to the seller.
"affiliated company"	a (legal) person whose purpose is to trade in cheese, dairy products or related articles and who makes use of the Dairy Exchange and Trading Conditions organised by the Foundation. The affiliated companies pay a contribution to the Foundation to be determined by the board.
"packaging"	the application of fiscal stamps, stickers, labels, prices, the vacuuming, cutting, grating and portioning of cheese and related operations of checking, weighing and collecting.
"waxing"	the application of a protective layer or coating directly on the cheese.
"parties".	the seller/contractor and buyer/client jointly.
"buyer"	the party buying cheese from the seller.
"seller"	the party selling cheese to the buyer.
"client"	the party instructing the contractor to provide services.

"contractor"	the party instructed by the client to provide services.
"seller/contractor"	the seller and/or, where appropriate, the contractor.
"buyer/client"	buyer and/or, where appropriate, the client.
"cheese storage"	any space used for the storage and/or the processing of cheese.
"Incoterms"	the most current Incoterms of the International Chamber of Commerce at the time of conclusion of the agreement.
"package"	package is understood as the materials used in the transport of cheese and cheese products including: roll containers, pallets, shelves, transport boxes, CBL boxes and foil crates.
"trade"	the purchase and sale of cheese.
"provision of services"	the custody and/or packaging and/or waxing.
"package owner"	the party giving the package on loan.
"package user"	the party using the package on loan.

#### DEVIATING TRADING CONDITIONS

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

Conditions or stipulations deviating from these Trading Conditions, which are stated by an affiliated company in purchase or sales orders, orders for services and/or letters, or other way of correspondence, or verbally, are only applicable if these have been explicitly agreed upon in writing.

#### OFFERS

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

Offers are without obligation, unless otherwise stated in writing.

#### DELIVERY GENERAL

##### **Article 5.**

- 1 Unless otherwise agreed, delivery is made "ex works" in accordance with the Incoterms. If, in the event of ex works delivery, the buyer/client does not make a means of transport available on the day of delivery, or otherwise makes delivery impossible, all direct damage and costs incurred by the seller/contractor as a result of such default are for the account of the buyer/client.
- 2 For the interpretation of the transport and delivery periods used in offers, purchase agreements and/or confirmations of purchase, custody agreements and/or custody confirmations, the description as stated in the Incoterms applicable at the time of the agreement are decisive in so far as these documents and/or these conditions do not deviate therefrom.
- 3 If delivery "carriage paid" has been agreed, delivery will be made carriage paid including insurance to the agreed place of destination and the following will also apply:
  - a. If the seller/contractor fails to deliver on the day of delivery, all direct damage and costs incurred by the buyer/client as a result of such default is for the account of the seller/contractor.
  - b. Any additional costs incurred by the buyer/client as a result of delivery to various warehouses is borne by the buyer/client.
- 4 If deliveries to buyer/client are made on a call-off basis, the buyer/client will ensure that the instructions for delivery are made known to the seller/contractor in such a timely manner before the stipulated term expires that the seller/contractor is still able to deliver within the term.
- 5 In the absence of any, or lack of clarity in, the agreed method of delivery, seller/contractor is entitled to deliver in a manner it deems correct.
- 6 Regardless of what has been agreed between the seller and buyer or the client/contractor with regard to payment terms, the seller/contractor is entitled, prior to delivery, to require the buyer/client to provide sufficient security for payment. If this security for payment is not provided within the reasonable period set by the seller/contractor or is not provided to a sufficient extent - at the discretion of the seller/contractor - the seller/contractor is entitled to suspend (further) performance of its obligations under the agreement. In that case, the seller/contractor will not be liable in any way whatsoever for any damage suffered by the buyer/client as a result of this suspension.
- 7 The seller/contractor will at the request of the buyer/contractor disclose the production date of the cheese.

## LOADING AND UNLOADING INSTRUCTIONS

### **Article 6.**

- 1 The buyer/client will give clear and timely instructions regarding the transport and the method of loading and unloading.
- 2 If a delivery of cheese for custody consists of several batches, the buyer/client will clearly and timely indicate which cheese belongs to which of the separate batches.
- 3 If the buyer/client fails to give the instructions referred to in paragraphs 1 and 2 in good time, all consequences arising therefrom will be for its account.
- 4 If the cheese is loaded by the seller/service provider on the instruction of the buyer/client, the seller/service provider is not liable for any overloading of the transport unit. In that case, the seller/contractor is explicitly indemnified against overloading by the buyer/client.

## LOADING HEIGHT

### **Article 7.**

- 1 Unless delivered on pallets or otherwise agreed, the following (maximum) loading heights during transport apply for cheese between 14 and 28 days old:

<b>CHEESE TYPE (semi-finished/end product)</b>	<b>LOADING HEIGHT</b>
Gouda (all weights)	3
Gouda (with herbs etc.)	3
Gouda type (30+, 20+ etc.)	3
Maasdammer	3
Amsterdam	3
Butter cheese	3
Low-sodium cheese	3
Proosdij cheese	3
Edam*	3
Farmhouse cheese*	3
Goat cheese / Sheep's cheese	3
* For "Gouda" the forms "flat cylindrical", "block" and "loaf" apply. * For "Edam" the forms "spherical", "block" and "loaf" apply. * For "Farmhouse cheese" the forms "flat cylindrical", "block" and "spherical", apply.	

- 2 For cheese younger than 14 days, a maximum loading height of 2 applies regardless of the type of cheese.
- 3 For so-called "foil cheese" a maximum loading height of 8 applies; furthermore, foil cheese must always be transported refrigerated (between 1-7° Celcius)

## PACKAGE DEPOSIT

### **Article 8.**

- 1 The package owner guarantees that the package used is in good condition. In other words, it is clean and free from defects. If the package is not in good condition, the package user will report this in writing to the package owner within two working days.
- 2 Unless otherwise agreed, the package owner may charge a deposit to the package user to the amount of:

<b>Package type</b>	<b>Deposit amount</b> (each in euro excluding VAT)
Roll container	250.00
Transport box	450.00
CBL crate / E2 crate	3,86
Foil crate (complete)	250.00
Foil crate partitions	10.00
Multiple-use wooden pallets	10.00

Plastic H1 pallet	56,75
HT pallet	17.50

The deposit is paid together with the invoice for the purchase or the services relating to the goods delivered. If package is returned in good condition, the deposit is refunded by the package owner to the package user at the latest on the due date of the invoice. No VAT is charged on the deposit.

- 3 Package used by the package owner within the framework of a delivery of goods to the buyer/client may only be used by the package user for the transport of products of the relevant seller/contractor. The package user may not in any way give the package delivered to it to others for use. The package user may not change the appearance of the package, or otherwise apply stickers, paint, marks, symbols or names thereto.
- 4 The package user will ensure that the package supplied to it by the package owner remains in good condition, i.e. clean and without defects. If, after return delivery by the package user to the package owner, it appears that the package is not in good condition, the package user is liable to the package owner for the costs. The package user will also be liable for all damage suffered by the package owner as a result of the package not being returned in good condition.
- 5 The package remains the inalienable property of the package owner. This package is provided with markings showing that it is owned by the package owner. Therefore, no one under any circumstances may invoke the right of ownership, possession, pledge or any other right in rem against the package owner.
- 6 The risk of the package not being returned on time, the loss of the package and/or the contamination or damage of the package is for the account of the package user, for whatever reason. The package owner is in that case entitled to retain the deposit paid by the package user, without prejudice to the right of the package owner to claim (additional) compensation from the package user.

#### TERMS OF PAYMENT

##### **Article 9.**

1. All amounts owed by the buyer/client to the seller/contractor for whatever reason will be paid immediately and without application of set-off on the agreed due date.
2. The custody fee and - if the cheese is insured through the cheese storage facility - the premiums and costs of insurance will be charged over the agreed period, whereby part of this period is regarded as a full period.
3. Unless otherwise agreed, a payment term of 28 days after the invoice date applies to the buyer/client. If payment has not been made within the aforementioned period by crediting to the seller/contractor's account, the buyer/client will be in default by the mere expiry of the term, without any summons or notice of default being required. In addition, the buyer or client will then owe an interest of 1.5% per calendar month on the outstanding amount from the day after expiry of the term of payment. A part of a calendar month is considered a complete calendar month. This interest is due and payable without any summons or notice of default being required. Furthermore, the buyer/client will reimburse the seller/contractor for all collection costs incurred by seller/contractor.
  - a. In particular, the buyer/client is liable to pay: invoices from lawyers, both in and out of court, also to the extent that they exceed the assessed amounts, costs of bailiffs, agents and collection agencies.
  - b. The above-mentioned extrajudicial costs of these third parties is fixed at 15% of the principal sum, with a minimum of € 100.
  - c. The buyer/client will also bear the costs of a bankruptcy petition as well as storage costs in the event of suspension of delivery.
  - d. The seller/contractor does not have to prove that claimed collection costs have been incurred.
4. Without prejudice to any statement to the contrary made by the buyer/client when making its payments and without prejudice to the administrative processing thereof by the seller/client, the payments made by the buyer/client will always and exclusively be deducted from any collection costs and interest owed by the buyer/client, secondly from those claims of the seller/client which relate to goods already resold and delivered by the buyer/client to third parties, and finally from the oldest outstanding invoices of the seller/client.
5. All claims of the seller/contractor against the buyer/client will be immediately due and payable if the buyer/client is declared bankrupt, applies for a suspension of payment, is declared subject to the Natural Persons Debt Rescheduling Act, attachment is levied on the buyer/client's assets, which attachment is not lifted within 30 days, or buyer/client otherwise loses the free disposal of (part of)

its assets, if buyer/client offers a settlement to its creditors, if it is in default of any obligation to seller/contractor, or if it ceases its business. The same applies if the business is conducted through a legal person and that legal person goes into liquidation.

6. All goods delivered by the seller remain its property - even after and despite processing or treatment - until the buyer has paid in full all claims relating to goods delivered or to be delivered pursuant to an agreement, including work performed or to be performed pursuant to such agreements and all claims for failure to perform such agreements including all collection costs and interest due.
7. The buyer will, at the seller's first request, establish an undisclosed pledge on the goods delivered for the benefit of the seller, if possible by means of reservation of ownership of the goods delivered, for all existing and future claims of the seller against the buyer, including all collection costs and interest due; the buyer is not permitted to establish a possessory or undisclosed pledge on the goods delivered by the seller for the benefit of a third party.
8. The buyer receives the goods belonging to the seller on loan and - if it is in default - it will make them available to the seller at the seller's first request and grant access to its business premises, where the goods are located, so that the seller can take possession of the goods by giving notice of termination of the loan agreement - which can take place with immediate effect.
9. The buyer is not entitled to pledge the goods, which are the property of the seller, to third parties (or to establish an undisclosed or possessory pledge on those goods for the benefit of a third party) or to transfer their possession to third parties, with the exception of sale and delivery to third parties in the normal course of its business.
10. As security for the payment of all that the buyer or client owes or will owe to the seller or contractor for whatever reason, the seller or contractor will have a right of retention and possessory pledge on all monies and cheeses of the buyer/client, which the seller/client has in its possession at any time.

#### ORIGIN OF THE CHEESE

##### **Article 10**

1. The seller/client will on request inform the buyer/contractor of the region in which the cheese was produced.
2. The cheese products are named in accordance with the nomenclature set out below in Article 17(2).
3. The seller/client will furthermore comply with all applicable statutory regulations and statutory specifications in the Netherlands.

#### LIABILITY & FORCE MAJEURE

##### **Article 11**

1. Force majeure within the meaning of these Trading Conditions is understood to mean that which is included in Dutch (case) law in this respect. Force majeure releases the seller/contractor and the buyer/client from the obligation to deliver or take delivery without the seller/contractor or buyer/client being able to assert any right to compensation on that account.
2. In the event of temporary force majeure, the seller/contractor will only be released from its obligation pursuant to paragraph 1 if the temporary force majeure has lasted for more than three months.

##### **Article 11A**

The obligation to pay compensation for non or improper performance will in no case include consequential damage to the goods or services delivered under that agreement. By consequential damage is meant at least loss of profit, loss of savings of costs or damage as a result of business stagnation. The limitation and/or exclusion of liability cannot be invoked in the event of wilful recklessness.

#### DISPUTES

##### **Article 12**

1. All disputes that may arise between the buyer/client and the seller/contractor - including their heirs

or assignees - both legal and factual, of whatever nature, as a result of or in connection with an agreement to which these Trading Conditions apply, or of further or related agreements or obligations under the law, will be submitted to arbitrators for decision, to the exclusion of the regular courts.

- 2 Contrary to the provisions of the previous paragraph, the seller/contractor may, however, submit a dispute or claim as referred to in that paragraph to the opinion of the competent subdistrict court, if the dispute or claim in question does not exceed the amount referred to in Section 93 Dutch Code of Civil Procedure.
- 3 Arbitration as referred to in paragraph 1 is also subject to the arbitration regulations of Stichting Nederlandse Zuivelbeurs, with its registered office in The Hague, as applicable at the time the dispute was submitted.
- 4 The provisions of paragraphs 1 and 2 of this article do not affect the right of the buyer and seller or the client and contractor to strive for an amicable settlement in accordance with the Dispute Settlement Rules at the start of the arbitration.
- 5 This dispute clause does not exclude the parties' right, in case of urgent matters, to apply to the District Court in preliminary relief proceedings and to take and maintain prejudgment legal measures.
- 6 If different agreements have been concluded between the same parties subject to these trading conditions and one of the parties fails to fulfil its obligations under one of the agreements with respect to the other or fails to pay the compensation provided in lieu thereof, the latter will, if the attributable failure is established by a decision of the arbitrators, be entitled to claim security from the defaulting party, if so desired by the arbitrators, for the proper fulfilment of its obligation under other agreements.
- 7 If, despite a demand to that effect, the security is not provided, the other party will be entitled to terminate all current agreements. In that case, the other party will be notified as soon as possible by registered letter that this right is being exercised.

#### APPLICABLE LAW

##### **Article 13**

All agreements to which these terms and conditions apply in whole or in part are governed by Dutch law. The provisions of the Vienna Sales Convention do not apply.

#### FINAL PROVISIONS

##### **Article 14**

1. Wherever these trading conditions refer to working days, this does not include Saturdays, Sundays and generally recognised public holidays according to the General Extension of Time Limits Act.
2. If any stipulation of these general trading conditions or any part of an agreement entered into under these general trading conditions should be null and void or be annulled, this will leave the other stipulations of these general trading conditions or the other parts of the agreement completely intact. In that case the parties will make an arrangement for the void or annulled stipulation or the void or annulled part of the agreement that comes closest to the original intention of the parties to the agreement and the related general trading conditions.



## Chapter 2 Trade

### PURCHASE SUBJECT TO INSPECTION

#### **Article 15.**

1. In the case of "purchase subject to inspection", the buyer has the right to inspect the cheese or have it inspected before receipt. The inspection will take place within a certain period of time, i.e. no later than the 2nd working day following the day on which the seller informs the buyer that the goods are available for inspection. As a rule, this is the 2nd working day following conclusion of the "purchase subject to inspection", unless a longer period has been agreed.
2. If, on the basis of the inspection carried out pursuant to the first paragraph, the goods do not meet the buyer's expectations, the agreement will be deemed to have been terminated.
3. If the buyer or its agent fails to carry out the inspection within the aforementioned period, the cheese will be considered to have been approved; any subsequent remarks cannot lead to termination of the agreement or any compensation, except in case of hidden defects.
4. Notification of whether or not the goods have been approved will be given to the seller or its agent on the day of inspection.

### WEIGHT

#### **Article 16.**

1. The weight of the delivery determined by the seller is only binding for the buyer if no deviations occur upon weighing immediately upon arrival by the buyer.
2. The buyer will report the deviation from the weight to the seller and confirm this in writing, if possible on the same day, but no later than 2 working days after delivery. The seller will respond within 2 working days and confirm this in writing.

### AGE OF THE CHEESE

#### **Article 17.**

1. In the case of delivery of aged cheese, the cheese will have the age at which it was bought or sold or on the basis of which service is provided.
2.
  - a. May cheese is defined as cheese produced in the months up to and including May.
  - b. Summer cheese is defined as the cheese produced in the months from June to August.
  - c. September cheese is defined as cheese produced in the period from 1 September to 15 October.

### DELIVERY SCOPE

#### **Article 18.**

1. If a certain quantity by weight has been agreed at the time of purchase and sale, the batch may have a greater or lesser weight at the time of delivery:

to	1,000 kg	5%
to	5,000 kg	4%
to	10,000 kg	2%
over	10,000 kg	2% up to a maximum of 1,000 kg.
2. Complaints about deviations from the purchase weight will be communicated to the other party in writing within 2 working days after receipt of the batch in question.  
To determine any deviations from the purchase weight, the seller may have weighed the cheese no more than 8 hours before dispatch. The recipient will have weighed the cheese within 8 hours of receipt. The difference between the two weighings is the weight deviation. The time between dispatch and receipt is determined on the basis of the fastest route between dispatch address and receipt address. The time between dispatch and receipt is extended, where appropriate, with a delay due to traffic congestion and legal rest due to driving and rest periods legislation.
3. Without prejudice to the above provisions, the following standards for settlement will apply to weight deviations in natural cheese:
  - natural cheese with an age of 14 days up to 35 days may show a weight deviation of up to 0.2% without settlement taking place; a deviation in excess of 0.1% may be settled.
  - natural cheese aged between 35 days and 12 weeks may show a weight deviation of up to 0.1% without settlement taking place; a deviation in excess of 0.05% may be settled.

- natural cheese with an age of 12 weeks and older may show a weight deviation of up to 0.05% without settlement taking place; in deviation in excess of 0.05% may be settled.

#### DELIVERY FROM DIFFERENT LOCATIONS

##### **Article 19.**

The buyer will accept receipt from different warehouses.

#### PURCHASE PRICE, PAYMENT

##### **Article 20.**

1. The price of cheese is determined per weight and will apply per kilogram net ex-warehouse of the seller in euro, excluding VAT, unless otherwise agreed.
2. The seller will send its invoice within 5 working days of delivery.

#### COMPLAINTS REGARDING DEFECTS

##### **Article 21.**

1. If, upon receipt, the delivered cheese does not comply with the agreement because the cheese shows a defect, complaints about this will only be dealt with if they have been submitted in writing within 5 working days after receipt of the goods, whereas a period of 2 working days applies to soft and fresh cheese.
2. If defects only become apparent after receipt, the buyer can only claim that the delivered goods do not comply with the agreement if it has notified the seller thereof within the following periods after it has discovered or reasonably should have discovered this:
  - a. in case of rind defects, the buyer will submit the claims to the seller in writing within 10 working days and these claims will only be considered until the cheese has reached the age of 42 days;
  - b. in case of defects other than those referred to above, complaints regarding actual hidden defects of both individual and type of goods will be submitted to the seller in writing within 10 working days of their discovery.
3. The seller will inform the buyer in writing of its position within 10 working days of receipt of the complaints.
4. If a dispute about which a claim has been submitted pursuant to paragraph 1 or 2 of this article is not resolved between the parties within a period of 6 weeks after the claim has been submitted or after the seller has made its position known in writing in the manner as referred to in paragraph 3, the party submitting the claim will request arbitration within 6 weeks thereafter, on pain of forfeiture of the claim, in the manner as described in Article 16 of the arbitration rules.
5. In assessing whether and when a buyer should reasonably have discovered a defect in the cheese (paragraph 2), the buyer's obligation to observe the standards of supervision and care set by practice and statutory regulations when storing the cheese will be taken into account. Cheese will be stored in a conditioned warehouse, while periodic inspections in relation to the type will take place, to be recorded in the buyer's warehouse logbook. In the case of whole naturally matured cheese, not packaged, a maximum temperature of 16° Celsius will be observed, unless agreed otherwise. All packaged cheese, including foil cheese, will be stored at 1-7° Celsius. The buyer will also ensure that the original packaging remains undamaged.
6. Contrary to the provisions of Section 7:23 Dutch Civil Code, the buyer will, under penalty of forfeiture of rights, complain in good time within the periods referred to in this section. If the seller invokes the buyer's forfeiture of rights in the event of a late complaint, the seller need not claim and/or prove any loss as a result of the late complaint.

**Article 22.**

- 1 Without prejudice to the right in Article 21, paragraphs 2 to 5, regarding hidden defects, the seller will no longer be liable for damage resulting from a hidden defect if a guarantee period listed below has elapsed between the day of delivery and the manifestation of a defect.

<b>CHEESE TYPE (Semi-finished product; end product)</b>	<b>RIND DEFECTS, not visible upon delivery</b>	<b>DAIRY DEFECTS</b>
	<b>AGE IN WEEKS</b>	<b>AGE IN WEEKS</b>
Gouda (all weights)	16	52
Gouda (with herbs etc.)	16	52
Gouda Type (20+, 30+ etc.)	16	52
Gouda* cumin	16	52
Gouda* reduced salt/fat	20	24
Maasdammer	6	8
Amsterdam	5	5
Butter cheese	8	8
Low-sodium cheese	5	5
Proosdij cheese	20	52
Edam*	20	52
Farmhouse cheese*	20	52
Goat cheese / Sheep's cheese	16	52
* For "Gouda" the forms "flat cylindrical", "block" and "loaf" apply. * For "Edam" the forms "spherical", "block" and "loaf" apply. * For "Farmhouse cheese" the forms "flat cylindrical", "block" and "spherical", apply.		

- 2 The provisions of the first paragraph do not apply if the buyer demonstrates that the defects originate in the production of cheese; the seller will provide the buyer, on request, with copies of the bacteriological report drawn up during production.

**NEGLIGENCE****Article 23.**

1. The other party of the defaulting party will inform the defaulting party in writing no later than the 2nd working day after the expiry of the term of delivery which course of action it will follow and it is free to grant the defaulting party a grace period in this respect. This grace period will, however, be properly defined.
2. If the notification indicated in the previous paragraph is not received by the negligent party within 2 days after the start of the negligence, the grace period is tacitly deemed to be 3 working days.
3. If at the end of the grace period the negligent party has not yet fulfilled its obligations, then the indicated course of action can be followed, subject to further agreement between the parties.

**Article 24.**

1. If the buyer fails to fulfil its obligations, the seller is entitled:
  - a. to demand compliance with the agreement, i.e. to claim payment of the invoice amount from the buyer, plus statutory interest, costs and damage, and in the meantime to leave the goods at the buyer's risk and expense and, if necessary, to load or store them;
  - b. or to claim termination of the agreement, i.e. to take back the goods and to demand compensation for costs, damage and interest.

**Article 25.**

If the seller fails to fulfil its obligations, the buyer is also entitled to demand performance or termination of the agreement, in both cases with compensation for damage.

## Chapter 3 Provision of services

### PART 1 Custody and processing

#### CUSTODY

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

1. In the performance of the custody the contractor will observe the care of a good custodian.
2. Specifically, the contractor undertakes towards the client to store cheese in storage in such a way that the preservation of the quality is reasonably guaranteed; the client will be compensated for all damage resulting from the client's failure to do so, insofar as this is attributable to the contractor and its client.

#### CUSTODY CONDITIONS

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

1. The custody and/or processing of cheese in the cheese storage are at the risk and expense of the contractor. The contractor will have adequate insurance against all risks that may affect the stored cheese, whether or not intended for processing, during the term of the agreement.

#### START AND END OF THE CUSTODY OF THE CHEESE

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

1. A start has been made with the custody and/or processing of the cheese by the contractor:
  - a. if the cheese is unloaded by the contractor's employees on entry: as soon as the employees start unloading;
  - b. if the cheese is not unloaded by the contractor's employees on entry: as soon as the employees carrying out the unloading have placed part the batch in the cheese storage facility.
2. The custody and/or processing of cheese has come to an end:
  - a. If the cheese is loaded by the contractor's employees at the time of removal: as soon as the employees have placed part of the batch in question in the vehicle or at another location for removal;
  - b. if the cheese is not loaded by the contractor's employees at the time of removal: as soon as the removal from storage begins.
3. The storage fee and additional costs is payable to the contractor for the full period for which space has been made available to the client for the cheese in question. The entry and removal is deemed to be included in the storage fee.

#### DESCRIPTION OF THE CHEESE

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

1. When entering into the service agreement, the client will provide the contractor with a sound and sufficiently detailed written description of the cheese, stating the various types, qualities, weights, values, quantities, as well as all other details and/or specific characteristics of which knowledge by the contractor is important for the proper execution of the custody agreement.
2. If the contractor takes receipt cheese of which the full details regarding type, quality, nature or characteristics have not been made known to the client, the contractor will not be aware of these details by the mere receipt of that cheese. The same applies if the client on delivery of the cheese does not provide the contractor with the information reasonably necessary to enable proper custody.

#### ENTRY

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

1. The client will ensure that the supplied cheese is delivered by it or on its behalf to the cheese storage facility free of charge.
2. The contractor will only carry out entry checks on the cheese offered to it for storage and/or processing in terms of the number of packages, cheeses, weight and externally perceptible characteristics in terms of nature and type, which checks is laid down in writing by the contractor,

unless otherwise agreed between the contractor and the client. The contractor will inform the client immediately, but in any event no later than within 2 working days, of any discrepancies it has observed with respect to the accompanying consignment note. For the financial settlement of the agreement between the contractor and the client, the weight as stated on the consignment note applies, unless the weight measured by the contractor deviates by more than 0.01% (subject to proper submission of proof), in which case the weight measured by the contractor applies.

- 3 The contractor is not obliged to accept cheese of which the nature, type, quality, weight, number, packaging and/or value visibly deviates from the original description or does not meet the requirements that can be set. The contractor will always assess the cheese according to standards of reasonableness and fairness.
- 4 If the contractor agrees to nevertheless store or process such cheese, all necessary extra work to prepare, clean or change the space made available for that purpose will be carried out by or under the supervision of the contractor and at the client's risk and expense.
5. The contractor will provide the client with a receipt upon arrival of the cheese at its complex. Subject to other convincing means of proof, this receipt is proof that the cheese described therein has been received by the contractor for storage and/or processing at the expense of said client.

#### SPECIAL CHEESE STORAGE METHOD

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

1. If no written instructions were provided to the contractor by the client when the cheese was delivered for storage and/or processing, the contractor will store and/or process this cheese at its own discretion and in a manner that is customary in the sector.
2. If, in the opinion of the client, a special method of custody of the cheese is required, the client will always notify the contractor in writing in good time to give the contractor the opportunity to take the necessary preparatory measures, failing which the contractor will not be liable for losses and/or damage, in whatever manner, occurring during the custody of the cheese in question.
- 3 If, in the opinion of the client, a special method of storage of the cheese by the contractor is required or is made necessary by the nature of that cheese, all related additional costs are for the account of the client.

#### REFUSAL TO STORE CHEESE

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

1. The contractor is entitled to refuse cheese offered for processing and/or storage. In its assessment, the contractor will act in accordance with standards of reasonableness and fairness and give reasons for its decision.
2. Cheese may in any event be refused if:
  - a. it does not meet these conditions and regulations;
  - b. it can cause danger and/or damage to other cheese stored in the cheese storage facility;
  - c. it does not appear to be in order from a sensory point of view;
  - d. upon request, the origin of the cheese cannot be communicated and proven.

#### TIME OF ACTIVITIES

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

1. Unless otherwise agreed in writing, all work to be carried out by the contractor on or with regard to the cheese is carried out at normal working hours, designated as normal working hours in the PkP collective labour agreement.
2. If the client requires work to be carried out outside normal working hours, the contractor is free to comply with such a request or not. However, the contractor will only refuse on reasonable grounds.
3. The extra costs incurred as a result of performing work at the client's request outside the normal working hours referred to in paragraph 1 of this article is borne by the client.

#### PLACE OF STORAGE AND RELOCATION OF THE CHEESE

##### **Article 34.**

1. The contractor is authorised at all times to store the cheese in such space in the cheese storage

facility as it can make available for this purpose. The starting point is that the space must be suitable for the purpose intended by the parties to the custody agreement and must meet the legal requirements.

2. Unless the parties have agreed otherwise in writing, the contractor is free at all times to relocate the cheese offered to it for storage to another cheese storage facility, provided this is suitable for the cheese in question. The contractor will inform the client if the cheese is stored outside its complex, stating the place of storage and without prejudice to the client's option to also inspect the cheese there.

#### ACCESS

##### **Article 35.**

1. Access to the premises and buildings of the cheese storage facility is only permitted to the client or someone on its behalf during the normal opening hours of the cheese storage facility. When visiting the cheese storage facility, the client or the person on its behalf will always first report to the company management. The contractor has the right to refuse access on reasonable grounds.
2. All persons who are on the storage contractor's premises on behalf of the client, including its employees and third parties, will observe the rules, regulations and formalities applicable on site as well as instructions from the Customs, Inspection Service and other authorities with regard to hygiene, order and safety.

#### DELAYS

##### **Article 36.**

1. The contractor is not liable for any delay, loss of time, costs or damage of any nature whatsoever suffered by whomsoever as a result of loading or unloading locations not being accessible or not being usable or already occupied, unless a location has been reserved in advance.
2. If vehicles do not arrive or cannot be handled at the time set for that purpose or cannot reach their loading/unloading location on time, for whatever reason, the contractor is entitled to compensation for unnecessary costs, loss of time and/or other costs of whatever nature incurred as a result, unless there is a case of force majeure on the part of the client.
3. If the client notifies the contractor that the cheese will be delivered or collected from the latter at a certain time and special action or commitment is required from the contractor for this, the client is liable for all damage and costs resulting from this if the cheese is not delivered or collected properly and on time, and indemnifies the contractor against all claims that third parties may make against the contractor in connection therewith.

#### CHEESE ON WHICH COSTS ARE PAYABLE

##### **Article 37.**

1. The contractor is under no circumstances obliged to accept cheese on which freight, taxes, duties, fines and/or other charges or costs, of whatever nature, must be paid, unless sufficient security has been provided by or on behalf of client.
2. All freight, taxes, duties, fines and/or other charges or costs, however named, to be paid on arrival or afterwards, are paid by the client in advance. As this advance payment is by its nature short term, no interest is paid thereon.

#### LAWS AND REGULATIONS AS WELL AS GOVERNMENT INSPECTION

##### **Article 38.**

1. The custody is subject to the relevant laws, regulations, guidelines and/or rules and instructions of the government.
2. If such laws, regulations, guidelines and/or government regulations and instructions are amended after the date on which an agreement has been concluded, such amendments are nevertheless deemed to form part of the agreement.
3. If such changes result in a change in costs, the contractor is entitled to adjust the agreed price or rate accordingly as of the date of such change.

- 4 If, as a result of a government inspection, additional, unforeseen work has to be carried out by the contractor, the contractor is entitled to charge the related costs to the client, unless these additional costs are the result of negligence attributable to the contractor.

#### RIGHTS, TAXES AND STATUTORY OBLIGATIONS

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

1. If cheese is subject to customs and excise provisions or other taxes and/or government regulations, the client will always provide all information required by the contractor in good time to enable it to submit the relevant statements.
2. The contractor is not liable for the correctness of the information stated on a consignment note if this information has been provided by the client. This also applies to the labelling affixed to the cheese. The contractor is only obliged to check weights, number of packages and description of the cheese, the latter only if this is externally perceptible to the contractor.
- 4 The contractor is not liable for checking, taking in, keeping, completing or issuing any documents whatsoever, nor for the content of such documents, unless there is a statutory obligation to do so or this has been expressly agreed in writing as a performance to be provided by the contractor.

#### SPECIAL MEASURES

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

1. Without prejudice to the provisions of the previous article, the contractor is entitled, at the risk and expense of the client, to immediately take all measures the contractor deems necessary, including destruction of the cheese, if, according to standards of reasonableness and fairness, failing to take such measures will result in a risk of loss of or damage to the cheese itself, other cheese or the cheese storage facility, or death or physical injury to persons or animals. All related costs, including those of destruction, are at the expense of the client.
2. The contractor will notify the client as soon as possible in advance of the measures to be taken, unless this is not possible, in which case the contractor will inform the client as soon as possible of the measures taken.
3. In the event of a public sale of the cheese by the contractor, the contractor will pay the proceeds of the cheese to the client, after deduction of all costs and any claims against the client, if possible within one week of receipt, failing which the amount will be held on deposit.

#### CHANGES TO PRICES/RATES

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

1. Unless a price/rate has been agreed in so many words, the client will owe the price/rates that are usually charged by the contractor and which are customary in the industry.
2. The agreed prices/rates only concern the activities of the custodian as expressed in the custody agreement. In case the activities are not specified, only the following is meant: entry, handling, storage and removal of cheese.
3. All other costs, such as relocation, handling and/or processing, even if not mentioned in these general conditions, are charged at rates and subject to conditions that are customary for the custodian and in the industry.
4. Changes in price/rates are notified to the client as soon as possible and will take effect no later than three months after notification.

### **PART 2 Packaging**

#### PACKAGING

##### **Article 42.**

1. The contractor will carry out the packaging work in accordance with the client's instructions. If the client does not give instructions, or if these are lacking, the contractor will carry out the packaging work in accordance with the statutory regulations and customary practice within the industry.
2. The client will indemnify the contractor against claims from third parties, by whatever name, unless and insofar as the contractor has failed imputably in the performance of its obligations.

**Article 43.**

- 1 Insofar as a "new" product, in the sense of the product liability legislation, may arise as a result of the packaging work by the contractor, the client and never the contractor will always be regarded as the producer. The client will affix its own brand or distinguishing mark to the "processed" cheese. If the client fails to do so, the contractor is entitled to affix a mark to the cheese, stating the client's name, address and place of establishment. All related costs are borne by the client.
- 2 The client indemnifies the contractor against claims from third parties, however named, based on product liability legislation.

**Article 44.**

- 1 Complaints about the soundness of the packaging work by the contractor can only be made within 10 working days after the client has discovered the unsoundness thereof, but in no case later than 42 days after the time at which the packaging work in question took place.
- 2 Complaints about the soundness of the packaging work are inadmissible if the client has proceeded to process or re-deliver when the client could have established the alleged soundness of the packaging work by simple verification at first sight.
- 3 The contractor's obligation to pay compensation in respect of the packaging services supplied by it will never exceed an amount equal to the invoice amount for the packaging services supplied to which the defect relates, without prejudice to any right of the client to terminate the service agreement in question on account of an attributable shortcoming. The service provider is be liable for any consequential loss, however named and for whatever reason.

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## II DISPUTE SETTLEMENT AND ARBITRATION RULES (2020)

### of Stichting Nederlandse Zuivelbeurs

These rules apply to all disputes between the affiliated companies of Stichting Nederlandse Zuivelbeurs, of whatever nature. These rules also apply if parties that are not affiliated to Stichting Nederlandse Zuivelbeurs, but have declared the general trading conditions of Stichting Nederlandse Zuivelbeurs, or these arbitration rules, applicable by agreement.

#### Section START OF PROCEEDINGS

##### Article 1.

- 1.1 Arbitration proceedings brought by submission of a request for arbitration to Stichting Nederlandse Zuivelbeurs. The dispute is considered to have been submitted on the day of receipt of the request for arbitration by Stichting Nederlandse Zuivelbeurs.
- 1.2 The request for arbitration will be submitted in writing, dated and sent in five copies to the address of the secretary's office of Stichting Nederlandse Zuivelbeurs, stating:
  - a. the name and address of the applicant (claimant);
  - b. the name and address of the counterparty (defendant);
  - c. a brief clear description of the dispute and a reference to the arbitration agreement and any other agreement(s) to which the arbitration relates, including copies of the relevant agreements;
  - d. what is required by the applicant (the claim).
- 1.3 If necessary, the applicant may indicate in the request for arbitration that it wishes to first try a dispute resolution by mediation as referred to in section B of these rules.
- 1.4 The secretarial office of Stichting Nederlandse Zuivelbeurs will confirm receipt of the request for arbitration as soon as possible, by registered letter, to both the claimant and the defendant, sending a copy of the request for arbitration to the claimant.
- 1.5 Within three working days after the administration costs as referred to in Article 29.1 have been paid by claimant, the secretarial office will request both the claimant and the defendant to notify the secretarial office in writing by registered letter within seven days whether they wish to attempt mediation, or whether they wish to proceed directly to arbitration.

If the parties have not responded within the set period of seven days, or if both parties have not indicated that they wish to settle the dispute by mediation, the secretarial office will inform the parties thereof and the arbitration proceedings will be continued.

#### Section B MEDIATION

##### Article 2

- 2.1 If both parties have indicated that they wish to achieve dispute resolution through mediation, the secretarial office will recommend one or more mediators to the parties, accompanied by a mediation agreement. The parties will jointly decide on the appointment of a mediator.
- 2.2 The secretarial office will, in consultation with the mediator, determine the amount of the deposit for the mediation proceedings. This deposit will include the administration costs of Stichting Nederlandse Zuivelbeurs for the mediation proceedings.
- 2.3 The deposit will be paid equally by the parties and will be administered by the secretarial office. If necessary, the secretarial office may request an additional deposit from the parties. This additional deposit will also be paid equally by the parties. At the end of the mediation proceedings, the secretarial office will send an overview of the financial settlement to the parties.

##### Article 3

- 3.1 If the parties do not reach a joint choice within 14 days with regard to the mediator to be appointed by them, or do not pay the deposit or additional deposit within 14 days after being requested to do so by the secretarial office of Stichting Nederlandse Zuivelbeurs, the mediation proceedings will end.
- 3.2 In the event that the mediation proceedings ends as provided for in paragraph 1 of this article, or one of the parties indicates that they wish to terminate the mediation, or if, after a period of three months after the parties have notified the secretarial office of their joint choice of mediator, the mediation has not ended in a written settlement agreement between the parties, which also includes the termination of the commenced arbitration proceedings, the secretarial office will notify the parties of this and the arbitration proceedings will be continued.

- 3.3 If the parties reach a settlement, the mediator will draw up a written settlement agreement and have this signed by both parties.

## **Section C ARBITRATION**

### Article 4.

- 4.1 All disputes of both a legal and factual nature arising between the parties to which these arbitration rules apply will be settled by arbitration in the manner set out in these arbitration rules.
- 4.2 In the event that a prior attempt at mediation as referred to in section B is terminated, without it being agreed that the arbitration proceedings commenced will end, the basis of the arbitration will continue to be the claim as laid down in the application referred to in Article 1, unless the claimant wishes to supplement, increase or decrease this claim, or at least to change it, of which claimant will immediately notify the secretarial office as well as the counterparty in writing.
- 4.3 As soon as the secretarial office has established that arbitration will continue, whether or not after an attempt at mediation, it will inform the claimant of the amount to be deposited by the claimant to cover the probable costs associated with the arbitration. The claimant will separately pay an amount for administration costs, as stipulated in Article 29.1. During the term of the arbitration, the secretarial office may require one or more additional deposits from the claimant.
- 4.4 The determination of the deposit and/or additional deposit, as referred to in paragraph 3 of this article, and the subsequent collection and management thereof may be deposited by the secretarial office with the registrar.

### Article 5.

#### 5.1

Unless otherwise agreed, the arbitral tribunal will consist of three arbitrators.

As soon as possible after receipt of the determination referred to in Article 4.3 that arbitration will be continued, the registrar will send each of the parties an identical list of names of persons. A party may remove from the list the names of persons against whom there are prevailing objections and number the remaining names in the order of its preference. If the registrar does not receive a list returned by a party within fourteen days, it will be presumed that all persons on the list are equally acceptable to that party as arbitrators.

#### 5.2

The registrar, taking into account the preferences and/or objections expressed by the parties, will invite two persons on the list to act as arbitrators who, after their acceptance, will designate the third arbitrator to act as chairman. If it appears from the returned lists that there are insufficient persons on them who are acceptable to each of the parties as arbitrators, or if one person is unwilling or unable to accept the registrar's invitation to act as arbitrator, or if for other reasons it appears that he cannot act as arbitrator and there are insufficient persons remaining on the returned lists who are acceptable to each of the parties as arbitrators, the registrar will have the power to directly appoint one or more other persons as arbitrators.

### Article 6.

The board of Stichting Nederlandse Zuivelbeurs will appoint a registrar for the arbitration proceedings. The registrar fulfils the function of secretary. The appointment of the registrar will be communicated to the parties in the letter as referred to in Article 5.5.

### Article 7. Choice of dispute resolution

- 7.1 As soon as possible after his appointment, the registrar will contact both parties and ask them whether they wish an immediate oral hearing of the dispute or whether they wish to explain this in writing beforehand.
- 7.2 If the parties wish an immediate oral hearing, they will inform the registrar accordingly within 7 working days. If they wish an oral hearing, the date of the hearing will be determined by the arbitral tribunal without delay and notified to the parties.
- 7.3 If the parties indicate in advance that they wish to provide a written explanation, or if they fail to respond within the set period of time, the registrar will request the claimant to submit its statement of claim within 3 working days of the expiry of the period of time referred to in the second paragraph of this article.

#### Article 8 Time limits of the proceedings

- 8.1 The statement of claim referred to in Article 7.3 will be received by the registrar no later than twenty-one days after the date of the request.
- 8.2 After receipt of the statement of claim, the other party will be given the opportunity to submit a statement of defence within twenty-one days at the latest.
- 8.3 During the process as described in this article, both parties will have the opportunity to request a maximum of fourteen days' postponement. Only in exceptional cases, at the discretion of the registrar, may an additional period of postponement be granted for compelling reasons.
- 8.4 During each step of the proceedings outlined in this article, each of the parties will submit five copies of their written statements to the registrar, with one copy being simultaneously sent to the other party.
- 8.5 After the expiry of the periods stated in the previous paragraphs without timely submission of a statement, or completion of the proceedings as described in paragraphs 1 to 4, or if both parties have declared that they waive their right to (further) explain their position in writing, both parties will be informed by or on behalf of the arbitral tribunal of the place and time at which the arbitral tribunal will hold an oral hearing of the dispute.

#### Article 9

- 9.1 The arbitral tribunal may, as far as possible, itself during the arbitration visit the party or parties to the dispute or order an expert's report in accordance with the provisions of section D.
- 9.2 The arbitral tribunal may order the parties to bring or summon witnesses and may itself summon witnesses. All oral hearings and statements must take place at the hearing, except in exceptional cases at the discretion of the arbitral tribunal.
- 9.3 Hearings will not be recorded unless the arbitral tribunal decides otherwise.

#### Article 10.

- 10.1 The parties may appear in person or be represented by an authorised representative, provided that such representative is duly authorised.
- 10.2 The parties will provide the arbitral tribunal all data and information requested by the arbitral tribunal and with comply with its written or oral instructions. If a party fails to do so, the arbitral tribunal, when rendering its award, will be able to draw the appropriate conclusions therefrom.
- 10.3 If the defendant is not present or represented and has not submitted its statement of defence to the arbitral tribunal in good time, the claim will be awarded unless the arbitral tribunal finds that the claim is unlawful or unfounded, or that there are grounds for staying the arbitration, or to determine a further hearing.

#### Article 11.

- 11.1 The defendant may lodge a counterclaim at the latest by statement of defence or, failing that, at the first hearing at the latest, provided that the counterclaim is a consequence of the same agreement as the original claim or is directly related thereto.
- 11.2 A counterclaim will always be submitted to the registrar in writing in five copies.
- 11.3 If the counterclaim is the result of another agreement entered into under the terms and conditions of Stichting Nederlandse Zuivelbeurs, separate arbitration must be requested for this, but one can request that this claim be handled by the arbitration tribunal that will decide on the original claim.
- 11.4 The arbitration tribunal will determine whether the counterclaim will be decided at the same time as the original claim, or whether it should be handled entirely on its own.
- 11.5 The arbitration tribunal may also, in the event of simultaneous handling, require the party making the counterclaim to make a deposit for the costs associated with the counterclaim.

### **CHALLENGE OF ARBITRATORS OR REGISTRAR**

#### Article 12.

- 12.1 If a party wishes to challenge the arbitrator and/or registrar appointed by the board of Stichting Nederlandse Zuivelbeurs, it will notify the arbitration tribunal, the secretarial office of Stichting Nederlandse Zuivelbeurs, the arbitrator in question and the counterparty in writing, which letter will contain on penalty of nullity:
  1. the name(s) of the challenged arbitrator(s) and/or registrar;
  2. statement of the reasons for the challenge.Reasons other than those stated in this letter will not be taken into consideration.

- 12.2 Arbitrators or the registrar may be challenged on the grounds allowed by law.
- 12.3 All challenges will be submitted at the same time; all under penalty of forfeiture of rights. If, however, a ground for challenge is not made known to the challenging party until later or if a party has received the notification referred to in paragraph 1 of this article, the challenge may be made within 24 hours thereafter.
- 12.4 The proceedings may be suspended by the arbitration tribunal from the date of receipt of the notification of challenge.

#### Article 13.

- 13.1 If a challenged arbitrator does not withdraw within two weeks after the day of receipt of the notification of challenge, the District Court in preliminary relief proceedings will decide on the merits of the challenge at the request and expense of the interested party.
- 13.2 If the request to the District Court is not made within four weeks after the day of receipt of the notification, the right to challenge will lapse and the proceedings, if suspended, will be resumed as they stand.
- 13.3 If the challenged arbitrator withdraws or if his challenge is found well-founded by the President of the District Court, he will be replaced according to the rules that were applicable to his original appointment, unless the parties have agreed another method of replacement.
- 13.4 A challenged registrar will be replaced by order of the board of Stichting Nederlandse Zuivelbeurs, whereby the appointment of a new registrar will take place in accordance with the provisions of Article 6.

#### Article 14.

If the arbitrator concerned, one of the parties or both parties live or actually reside outside the Netherlands, the periods mentioned in Article 13 are six and eight weeks respectively. If one of the parties is domiciled outside the Netherlands, the registrar may automatically extend the time limits for the submission of statements and other documents as referred to in these arbitration rules.

### **REPLACEMENT OF ARBITRATORS**

#### Article 15.

- 15.1 If, for whatever reason, one or more of the appointed arbitrators cannot (further) function as such, he will be replaced in accordance with the rules applicable to his original appointment, unless the parties have agreed another manner of replacement.
- 15.2 In so far as the mandate of one or more arbitrators has ended, the other arbitrators will be deemed to have been reappointed.
- 15.3 If replacement takes place after the notification referred to in Article 5.5 has already been sent, a corrected notification will be sent to both parties by registered mail.
- 15.4 If replacement takes place after the first hearing of the arbitrators, the case will be dealt with entirely anew, in accordance with the provisions of Article 7 et seq., unless the parties both agree to continue the commenced handling.

### **WITHDRAWAL OF ARBITRATION**

#### Article 16.

Arbitration may be withdrawn in writing by the applicant under the following conditions:

- 16.1 If an arbitration is withdrawn before the arbitration tribunal or experts have commenced their work, the applicant will owe an amount of €750 (ex VAT) in addition to the payment of any costs already incurred.
- 16.2. Withdrawal after a statement of defence has been put forward, however, can only take place if the other party declares in writing at the hearing that it will do so and against payment of the full arbitration costs as well as any other costs already incurred.
- 16.3 The arbitration tribunal may waive payment of the above amounts in whole or in part if special circumstances give cause to do so.

### **AWARD**

#### Article 17.

- 17.1. The arbitration tribunal will base their award on reasonableness and fairness. It will render its award no later than six weeks after the last act of trial or hearing. It is, however, empowered to extend the duration of its mandate if warranted by special circumstances.
- 17.2 The arbitration tribunal will decide by majority vote, without including the opinion of the minority. It

will draw up and sign a reasoned award in four copies of its decision. The registrar will ensure that a copy of the award is sent as soon as possible to:

- a. the parties simultaneously by registered mail;
- b. the registrar of the District Court in whose district the place of arbitration is located;
- c. the secretarial office of Stichting Nederlandse Zuivelbeurs.

17.3 The secretarial office of Stichting Nederlandse Zuivelbeurs is authorised to make the award available to third parties, and/or to publish it, with due observance of the anonymity of the parties.

## **APPEAL**

### Article 18.

The arbitration appeal tribunal will consist of three arbitrators on the relevant list referred to in Article 25.

### Article 19.

19.1 Each of the parties is entitled to appeal the award with the arbitration appeal tribunal, by means of a written notification to the secretarial office of Stichting Nederlandse Zuivelbeurs, within one month of the date on which the award was sent to the parties as referred to in Article 17.

19.2 The other party is entitled to lodge a counter-appeal, even after the aforementioned period, but no later than at the first hearing of the arbitration appeal tribunal. In that case, the other party may also be instructed to make a deposit for the arbitration costs.

### Article 20.

Articles 4 to 17 also apply to the handling of appeals, on the understanding that in the cases referred to in Article 15, the appointment will be made from the substitute members on the list in Article 25.2 and that the amount referred to in Article 16.1 will be doubled. Account will also be taken of the following: no new claim may be made in appeal except for interest, rent, damage or expenses, which have lapsed or arisen after the original claim was made known.

## **ALLOCATION OF ARBITRATION COSTS**

### Article 21

21.1 The arbitration tribunal and the arbitration appeal tribunal will estimate in their award the amount of the arbitration costs up to and including depositing the award with the registrar, including the costs of the registrar's work.

21.2 The amount determined by the arbitration tribunal and the arbitration appeal tribunal in paragraph 1 will be allocated to the parties. The allocation of the established amount will be included in the award.

21.3 If the defendant does not pay the costs allocated to it in the award, these costs will be paid by the claimant, after which the claim for these costs will be transferred to the claimant.

21.4 The costs allocated to the claimant or, if paragraph 3 applies, will as far as possible be charged to a deposit made by the claimant. The secretarial office of Stichting Nederlandse Zuivelbeurs will charge the claimant for any remaining costs before the award is published.

21.5 Contrary to paragraphs 2, 3 and 4, the arbitration tribunal (in case of appeal) may, if appropriate, decide that both parties must deposit the full amount referred to in paragraph 1 prior to publication of the award. After offsetting against the costs allocated to each of the parties, the remainder will be returned to the parties.

21.6 Invoices sent to the parties in respect of the costs as referred to in Article 29 up to and including 32 will be paid within eight days of the invoice date. In the event that this condition is not met, Stichting Nederlandse Zuivelbeurs may immediately proceed with collection measures, whereby any additional costs will be for the account of the party that remains in default.

## **Section D EXPERT'S REPORT**

### Article 22 In case of mediation

22.1 As soon as the advance payment determined pursuant to Article 24.1 has been made, the secretarial office will immediately invite each of the parties to appoint an expert from the list of experts drawn up pursuant to Article 25 of these rules within 5 working days of the invitation, while the mediator himself will appoint the third expert. This third expert will act as chairman of the experts.

22.2 If one of the parties fails to appoint an expert, this will be communicated to the other party and will be considered as a waiver of the right to appoint an expert. The proceedings will then be continued as stipulated in these rules.

22.3 The advance payment as referred to in Article 24.1 will be paid by each of the parties for half unless

- only one of the parties wishes an expert's report, in which case it will pay the entire advance payment.
- 22.4 If one or more of the appointed experts cannot (further) function as such for whatever reason, the mediator will in consultation with the parties appoint one or more other experts to take their place.
- 22.5 If any party is of the opinion that one or more experts have an interest in the report they are to issue, it will notify the secretarial office of its objection immediately upon receipt of the notification referred to in Article 24.2.
- 22.6 The parties may also require an expert's report at a later stage of the discussions.
- 22.7 The inspection record and the expert reports drawn up during the attempt at mediation are at the discretion of the arbitrator(s).

Article 23 In case of arbitration

- 23.1 As soon as the deposit referred to in Article 24(1) has been received in respect of the expert fee to be paid, the arbitration tribunal will from the list of experts drawn up pursuant to Article 25 of these rules appoint one or more independent experts to inspect the quality of the batch of cheese in question. The related costs will be charged to the deposit.
- 23.2 The number of experts to be appointed will be determined in consultation with the parties.
- 23.3 If, for whatever reason, one or more of the appointed experts cannot (further) function as such, the arbitration tribunal will appoint one or more other experts to take their place.
- 23.4 If any party it is of the opinion that one or more experts have an interest in the report to be made, it will notify the secretarial office of its objection immediately upon receipt of the notification referred to in Article 24.2.
- If the arbitration tribunal considers the objection made to be justified, it will replace the expert(s) with others, subject to the provisions of this article.

Article 24 In the event of mediation or arbitration

- 24.1 The secretarial office will determine the advance payment to be made for the costs associated with the compilation of the expert's report.  
The advance payment must be made within five working days of the invoice date.
- 24.2 On receipt of the advance payment referred to in paragraph 1 of this article, the secretarial office will notify the experts of their appointment, stating the fellow experts and the location of the goods to be examined, and will send a copy to the parties.
- 24.3 Immediately upon receipt of the notification referred to in Article 24.2, the designated experts will summon both parties to be present at the assessment of the goods in dispute and to provide the information requested by the experts.
- 24.4 The expert(s) will personally inspect the goods in dispute and report his/their findings in writing to the secretarial office within 5 working days after this inspection.
- 24.5 The expert(s) will at least state in the official report: the quantities, the identified cheese numbers/marks, the quality condition on the basis of a representative sample over the entire batch; the method of storage and furthermore everything that seems important and/or is requested with regard to the batch of cheese in question.

**Section E APPOINTMENT OF ARBITERS, SUBSCRIPTIONS AND REGISTRAR**

Article 25.

Annually, the board of Stichting Nederlandse Zuivelbeurs will draw up three lists of persons who are eligible to act as:

- 25.1 arbitrators in the first instance and arbitrators in case of appeal, both in such numbers that the widest possible choice can be made;
- 25.2 experts in which as many specialisms as possible are represented.

Article 26.

- 26.1 The names of each of the persons placed on the aforementioned three lists will be placed in alphabetical order. On the basis of these lists, the board of Stichting Nederlandse Zuivelbeurs appoints arbitrators and experts for the current calendar year.
- 26.2 The secretarial office of Stichting Nederlandse Zuivelbeurs ensures that the lists of the aforementioned arbitrators and experts are brought to the attention of all affiliated companies.
- 26.3. With regard to the arbitrators and experts, only their name, their place of residence, and the name of the company where they work will be disclosed.

#### Article 27.

The arbitrators and experts will be appointed for a period of one year. The persons on the lists may be reappointed immediately by the board. One may simultaneously be part of the list of experts and of the list of arbitrators in the first instance, but may not act as arbitrator in a dispute in which one has acted as an expert.

#### Article 28.

The arbitration tribunal will be supported by a registrar. The registrar will be a lawyer working in the Netherlands. The registrar will be appointed by the board of Stichting Nederlandse Zuivelbeurs. The same registrar will serve in the first instance and in case of appeal. One of the duties of the registrar will be to compile the awards in accordance with the instructions of the arbitrators. The registrar is not a member of the arbitration tribunal.

### **Section F COSTS**

#### Article 29. Administration costs

- 29.1 At the start of the arbitration, the claimant will owe the secretarial office a fixed amount of € 1000 (ex VAT) for administration costs. A claimant lodging a counterclaim will owe an equal amount for administration costs. In the event of an appeal, the said amount(s) for administration costs will again be due.
- 29.2 If the parties wish to try mediation, both parties [in addition to the amount for administration costs referred to in paragraph 1 of this article] will owe the secretarial office an amount of € 50 per person per hour for administration costs.
- 29.3 The secretarial office of Stichting Nederlandse Zuivelbeurs will collect the administration costs due.

#### Article 30. Witnesses and experts

Witnesses and experts heard at the hearing may claim compensation in accordance with the official scale of judicial costs and salaries in civil matters. The arbitrators will determine the amount of the compensation.

#### Article 31. Arbitrators

The fee for arbitrators is € 360 (ex VAT) per day part per arbitrator, that of arbitrators in case of appeal € 425 (ex VAT) per day part or continuous period of 4 hours per arbitrator. In addition to the fee, the arbitrators may claim compensation of their travel and accommodation expenses as well as other costs incurred for the purpose of the arbitration.

#### Article 32. Arbitration costs

Arbitration costs will be understood to mean the costs referred to in Articles 29, 30 and 31, in addition to all other costs which the arbitrators deem necessary for the arbitration, including the registrar's costs and the costs of any expert's inspection ordered by the arbitration tribunal (in case of appeal). Costs of legal assistance incurred by the parties will continue to be borne by the party providing legal assistance, except in special cases at the discretion of the arbitrators.

### **Section G FINAL PROVISIONS**

#### Article 33.

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

#### Article 34.

If a party has acted in breach of any of the provisions of these rules and has not protested against this in writing within six working days, it will be deemed to have waived its right to invoke this.

#### Article 35

Stichting Nederlandse Zuivelbeurs, its board and its employees, the arbitrators, the registrar, the expert as referred to in this and all those engaged by previous (legal) persons cannot be held liable for any acts or omissions with regard to an arbitration to which these rules apply.

#### Article 36

It will apply in the form in which it stands at the time the arbitration is commenced.

Article 37

Arbitration will be conducted in the Dutch language, unless one of the parties is domiciled abroad. In that case the proceedings will be conducted in English, unless the registrar informs the parties otherwise.

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