

GC RIEBER OILS AS GENERAL TERMS AND CONDITIONS



1. TERMS AND CONDITIONS

These Terms and Conditions (“**Terms**”) govern all sale of products, including (but not limited to) all refined and semi-refined fish oil products (the “**Products**”) by GC Rieber Oils AS, a company duly registered and existing under the laws of Norway, with the organization number 998 517 737 (“**Seller**”) to Seller’s customer (“**Buyer**”). The Seller and Buyer may also be referred to as a “**Party**” or collectively as the “**Parties**” herein.

The Terms shall be binding on the Parties to the extent nothing else is agreed to in a signed agreement (hereinafter called a “**Term Sheet**”), and thus, the Term Sheet shall prevail in any case of contradiction or conflict. No offer from Seller shall be binding before signed by Seller.

2. ORDERING

Buyer shall place orders (hereinafter a “**PO**”) in accordance with the provisions agreed to in a signed Term Sheet. If nothing is agreed to in such Term Sheet, the Seller shall always have reasonable time to deliver a PO.

NOTHING CONTAINED IN ANY TERM SHEET OR THESE TERMS SHALL BE READ, CONSTRUED OR INTERPRETED AS IF THE SELLER HAS AN OBLIGATION TO PROVIDE OR OBTAIN PRODUCTS FOR BUYER. THE SELLER SHALL ONLY BE REQUIRED TO USE ITS BEST EFFORTS TO OBTAIN AND DELIVER PRODUCTS WITHOUT LIABILITY (“BEST EFFORTS”).

3. FORECASTS ETC.

If the Parties to the Term Sheet have agreed that Products shall be delivered in several partial deliveries during the course of a certain time period, Buyer shall continuously keep Seller informed about their expected product requirement (“**Forecasts**”). Forecasts shall be used for planning purposes only.

4. PRICES. TERMS OF PAYMENT

The Seller shall invoice the Buyer at the time of delivery in accordance with the provisions of the Term Sheet. Unless otherwise is agreed to in a Term Sheet, the Buyer shall pay the Seller such invoiced amount without deduction or set-off within 14 – fourteen – calendar days after the invoice date.

In the event Seller and Buyer enter into a Supply Agreement/Frame Contract for a period in excess of four months, unless otherwise agreed to by Seller in the Supply Agreement/Frame Contract, the price(s) for Products set forth in such Supply Agreement/Frame Contract shall be valid for no longer than four months from the commencement date of the Supply Agreement/Frame Contract. In all other events, Seller has the right to revise the price at any time.

Unless otherwise is stipulated in the Term Sheet, all prices are exclusive of value added tax (VAT), custom duties or any other taxes or assessments.

In case of late payment, default interest shall be charged at the interest rate of 16 % p.a. from the first business day of default. Accrued interest shall be added to the principal debt on a daily basis, and interest will be payable on the aggregate sum (“**Interest on Interest**”).

If, without excuse by law, the Buyer fails to purchase the full volume agreed to in the Term Sheet (normally, but not exclusively, called the “**Minimum Volume**” or similar in the Term Sheet) and the Seller is ready, able and willing to tender the Products in such amounts, the Seller shall nevertheless be entitled to receive full payment as if the full volume of the Term Sheet was in fact delivered.

If Buyer is, in any respect, in breach of any provisions of the Term Sheet or these Terms, including (but not limited to) its obligation to pay, or if Buyer shall make an assignment for the benefit of its creditors, or in the event of a commencement or threatened commencement of proceedings by or against Buyer involving bankruptcy, insolvency, reorganization or similar arrangement (each a “**Default**”), Seller may defer further deliveries and suspend its own obligations until the Default is remedied (the “**Retention Right**”). If a Default gives Seller reasonable grounds for insecurity in respect of Buyer’s future performance of its obligations, it can demand that the Term Sheet is modified so that future deliveries are contingent on cash payment in advance.

Buyer shall not have the right to withhold any of its obligations, including its obligation to pay, on the basis of any alleged or factual breach by Seller.

Unless otherwise agreed to in the Term Sheet, all sums shall be payable in the lawful currency of the United States of America (USD). All invoices shall list VAT in Norwegian Kroner (NOK) and Seller shall use the currency exchange rate issued by Norges Bank on the date of the invoice.

5. TRADE TERMS

Unless otherwise is set forth in the Sales Contract Seller shall deliver the Products EXW Seller’s warehouse, Incoterms® 2010.

6. TIME OF DELIVERY. DELAYS

If Seller finds he will be unable to deliver the Product at the agreed time he shall without undue delay notify the Buyer thereof in writing. If Seller fails to deliver the Product on time, and the delay is not caused by any impediment beyond Seller’s reasonable control or an act or omission on the part of the Buyer, the Buyer is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of 0,02 per cent per day of the delayed Product’s agreed price from 14 days after the agreed delivery date. If the delay concerns only a part of the order, the liquidated damages shall be calculated on the part of the price which is proportionally attributable to the part of the Product which is delayed. The liquidated damages shall not exceed five per cent of the price of that part which is the basis of the calculation. If the delay is such that Buyer has become entitled to the maximum liquidated damages and the product is still not delivered Buyer may, by written notice, terminate the contract in respect of that part of the Product which has not been delivered. Buyer shall have the right to terminate the Term Sheet or a PO for the part of the Product which is delayed by written notice to Seller if it is clear that there will be a delay of more than five weeks. In case of termination on this ground, Buyer shall be entitled to maximum liquidated damages. Such liquidated damages shall be Buyer’s only compensation for any delayed delivery. Buyer loses his right to liquidated damages if he has not lodged a written claim for such damages within three months after the time when delivery should have taken place.

7. RETENTION OF TITLE

The Product shall remain the property of the Seller until paid for in full to the extent such retention of title is valid under applicable law (the “**Retention of Title**”).

8. WARRANTY AND LIMITATIONS OF REMEDIES; DISCLAIMER

SELLER’S SOLE AND EXCLUSIVE WARRANTY IS THAT, AT THE TIME OF DELIVERY OR AT ANY OTHER TIME THE RISK PASSES FROM SELLER TO BUYER, THE PRODUCT WILL CONFORM TO THE PROVISIONS AND QUANTITY (+/- 5 ALLOWED) SET FORTH IN THE TERM SHEET AND IN THESE TERMS. THESE WARRANTIES ARE SELLER’S SOLE WARRANTIES WITH RESPECT TO THE PRODUCT AND SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WHETHER WITH RESPECT TO ITS RECOMMENDATIONS, INSTRUCTIONS, PRODUCT, APPARATUS, PROCESS OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER FOR MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (the “**Exclusive Warranties**”).

Notwithstanding the foregoing, Seller is not liable for customary manufacturing defects, minor deviations or variations in quantities or specifications.

Seller’s sole liability to Buyer and Buyer’s sole and exclusive remedy for non-conforming Products (in Norwegian: mangel) is to (i) replace the non-conforming Products within reasonable time, or (ii) to reimburse the Buyer at the invoice price for such non-conforming Products (“**Seller’s Choice of Remedy**”). Buyer shall not get title or any rights to any non-conforming Products if Seller has made use of any of Seller’s Choice of Remedy.

The Seller shall not under any circumstance be held responsible for any other liability or remedy other than those two alternatives mentioned above as the Seller’s Choice of Remedy, and these shall be considered the Seller’s entire liability. The two alternatives shall also be the Buyer’s exclusive remedies.

UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSS, INCLUDING (BUT NOT LIMITED TO) LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS OR COST OF PROCURING SUBSTITUTE GOODS OR SERVICES OR ANY OTHER SIMILAR DIRECT OR INDIRECT LOSSES OR COSTS. SELLERS LIABILITY SHALL NOT IN ANY EVENT EXCEED THE AGGREGATED PURCHASE PRICE OF THE PRODUCTS SOLD.

9. INSPECTION AND ACCEPTANCE

Buyer shall promptly examine the Products upon delivery, and any complaint for non-conforming or deficient Products must be submitted in writing within five (5) calendar days after the time of delivery (the “**Notification Deadline**”). If such complaint is not submitted within the Notification Deadline, it shall be deemed void and the Products shall be considered fully compliant and accepted by Buyer.

If Buyer makes such a claim within the Notification Deadline, and provided the Seller does not dispute such claim, the Seller shall determine which remedy under these Terms he will invoke.

10. RETURNS

No Products may be returned to Seller without providing prompt written notice of that intent and obtaining Seller’s prior written consent. Returned Products must be securely packed by Buyer to reach Seller without damage. Seller is responsible for all reasonable costs of returning the Products to Seller including, without limitation, insurance costs.

11. CONFIDENTIALITY

Except as may be required in the marketing of the Products or with the Seller’s prior written consent, the Buyer shall not, either directly or indirectly, in whole or in part, use or disclose to any other person, firm, corporation, or other entity, any of the Seller’s confidential information, which may include (but not be limited to) records, Buyer lists, data, formula, documents, drawings, inventions, methods, or processes. Information about the Products that is revealed during the Term is confidential and shall be protected from disclosure (the “**Duty of Confidentiality**”).

The Duty of Confidentiality shall not prevent disclosure of information required according to regulations given by any competent stock exchange, by law or by the request of a governmental or other regulatory authority empowered to make such a request, or by the valid order of a court of competent jurisdiction. If possible, the disclosing party shall notify the other party prior to the making of such permitted disclosure.

The Duty of Confidentiality applies to all employees, agents, consultants and other personnel acting for or on behalf of any of the Parties with respect to the performance of any Term Sheet or these Terms. Each Party is required to take reasonable precautions to prevent information from being disclosed to any third party. As a minimum the information shall be protected in the same way as the respective Party’s other confidential information.

The Duty of Confidentiality shall survive indefinitely.

12. LIABILITY FOR THIRD PARTY HELPERS

Each Party shall be fully liable for the performance of service and deliverables that is performed by their own sub-contractor, partners or any other third-party used for the purposes of fulfilling the Term Sheet.

13. FORCE MAJEURE

The Seller and the Buyer shall not be considered in default hereunder or be liable for any failure to perform or delay in performing any provisions of this Agreement in the customary manner to the extent that such failure or delay is caused by any reason beyond its reasonable control due to force majeure or hardship.

In these Terms, “**Force Majeure**” refers to an event which is a hindrance to the performance of a Party’s obligations under the Term Sheet, and which is outside of the non-performing Party control, which the non-performing Party could not have foreseen when the Term Sheet was entered into, and which the non-performing Party could not or cannot reasonably be expected to surmount or prevent the effects of. Fires, acts of God, strikes, insurrection, terrorist attacks, wars, new import restrictions, regulatory hindrances or other formal or informal hindrances may be examples of Force Majeure events.

The fact that it has become or will become financially onerous for a Party to perform according to a Term Sheet due to sharply increased costs (“**Hardship**”), shall only be regarded as a Force Majeure event if such circumstances have made it noticeably onerous for the Party in question to perform according to the Term Sheet in question.

The Party whose performance has been interrupted by such circumstances shall use every reasonable means to resume full performance of this Agreement as promptly as possible.

14. SUCCESSORS AND ASSIGNS

All references to Seller and Buyer shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of a Term Sheet and these Terms shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

15. ENTIRETY

The Term Sheet, along with these Terms, constitute the only, final, complete and exclusive statements of the agreement between the Parties and shall supersede, if applicable, any and all other prior and contemporaneous agreements and understandings, both written and oral.

16. MODIFICATIONS

Buyer and Seller can supplement, amend or modify a Term Sheet or these Terms only through a written and signed document named “**Addendum to Term Sheet**”. Minor amendments can be agreed by e-mail between authorized employees.

17. NOTICE

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given by person, by e-mail, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) in accordance with the provisions of the Term Sheet.

18. SEVERABILITY

Whenever possible, each provision of the contractual relationship, including (but not limited to) the Term Sheet and these Terms, shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision is held to be invalid, illegal, or unenforceable in any respect under Norwegian law, such invalidity, illegality, or unenforceability will not affect any other provision, and the contractual relationship shall be reformed, construed and enforced as is such invalid, illegal or unenforceable provision had never existed.

19. WAIVER

No waiver by either Party of any of the provisions of the contractual relationship, including (but not limited to) the Term Sheet and these Terms, or the breach thereof, shall be considered as a waiver of any subsequent breaches, terms or conditions. No waiver shall be valid unless it is put forward in writing. No other conduct whatsoever shall be deemed as a waiver.

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21. INTELLECTUAL PROPERTY

The Buyer may not use Seller’s trademarks or trade names, neither on their own products or in the advertising of their own products, unless they have received a prior written permission by Seller.

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27. TRANSFER OF RIGHTS / ASSIGNMENT

The rights and obligations of Buyer can not be sold, assigned or in any other way be transferred to a third party without Seller’s prior written approval.

28. CHOICE OF LAW

The contractual relationship between Seller and Buyer, including (but not limited to) these Terms and the Term Sheet, shall be governed by and interpreted in accordance with Norwegian Law.

29. ARBITRATION

Any controversy, claim or dispute out of or relating to the contractual relationship (including the Term Sheet and these Terms), shall be negotiated in good faith between the parties.

If the Parties agree, an arbiter or mediation person or entity or panel may be appointed with a mandate to assist the Parties in resolving disputes that has arisen during the Term Sheet period. Costs related to such third-party assistance shall be divided equally between the Parties, unless otherwise agreed to.

To the extent the negotiations are not successful, each of the Parties may require the case to be resolved by arbitration according to the Norwegian Arbitration Act of 14.05.2004. Such arbitration proceedings shall take place in Bergen, Norway. The Parties shall jointly agree to and appoint the arbitrators used to settle the dispute. The Parties agree that the arbitration proceedings and the arbitration decision shall not be public.

If none of the Parties demands arbitration proceedings, the exclusive legal venue shall be Bergen District Court, Norway.
