

**1. General**

1.1 **Scope of application:** The General Terms and Conditions of Sale and Delivery form an integral part of all relationships concerning sale and delivery between Nutriswiss AG and the Buyer, and shall apply unless individual agreements provide otherwise. They shall apply to the relevant sales contract after the order has been placed and confirmed. The General Terms and Conditions or other documents of the Buyer which replace, amend or supplement these Terms and Conditions of Sale and Delivery shall have no legal effects, even if referred to in any confirmation of contract or in business correspondence. Different provisions for sales and deliveries in the animal feed sector are expressly stated (in italics).

1.2 **Applicable law:** The legal relationships between Nutriswiss AG and the Buyer shall be governed in accordance with Swiss law. This shall also apply to these General Terms and Conditions of Sale and Delivery. The United Nations Convention on the International Sale of Goods (CISG; SR 0.221.211.1) of 11th April 1980 shall not apply. Animal feed: The current Conventions of the Swiss Grain Exchange in Lucerne shall apply.

1.3 **Conclusion of contract:** Statutory provisions shall apply to the conclusion of contract (see Article 184 et seq. of the OR (Swiss Code of Obligations); SR 220). The Buyer's order shall be placed by telephone or in writing. Nutriswiss AG shall accept the order and give the Buyer confirmation (order confirmation) by fax, e-mail or post. Animal feed: The order confirmation is to be signed and returned before the first delivery and within ten (10) business days at most.

1.4 **Deadlines:** For the purposes of these Terms and Conditions, business days shall be Monday to Friday excluding public holidays and the 24th and 31st of December. Declarations linked to deadlines shall be received by the consignee no later than 16:00 on the last day of the period in question. Differences in recognised public holidays shall benefit only the Party which has to make or receive a declaration, or take action, on such a day.

1.5 **Quantity:** If a quantity between upper and lower limits (from - to) is agreed, performance shall be based on the midpoint.

**2. Delivery**

2.1 **General:** For delivery contracts, Nutriswiss AG shall specify the time of the delivery or acceptance within the agreed period. The Buyer shall be informed of the day of the delivery at least five (5) business days in advance, not including the day on which notification is given. For call-off contracts, the Buyer shall specify the time of the delivery within the agreed period. For delivery or call-off contracts, "immediate" shall mean three (3) business days, and "prompt" shall mean seven (7) business days from the day on which the contract was concluded, not including the day on which the contract was concluded. Partial deliveries and partial acceptance are not permitted. If the delivery or acceptance date is exceeded, upon expiry of a grace period without successful delivery or acceptance, both Nutriswiss AG and the Buyer shall have the right, if they do not insist on fulfillment, either to withdraw from the part of the contract which is unfulfilled and in dispute, or to claim damages for non-fulfilment. The minimum grace period shall be three (3) business days for "immediate" delivery dates and six (6) business days for all other delivery dates. Contracts regarding deliveries for which no reminder was sent by either Contracting Party within one month of the expiry of the agreed delivery or acceptance date shall be deemed cancelled. They shall be settled using the market price on the last business day of the month following the delivery period. Any differences shall be reimbursed. Animal feed: For delivery or call-off, "prompt" shall mean seven (7) and "available" three (3) business days after the day on which the contract was concluded. There shall be no grace period for "prompt" or "available" delivery dates.

2.2 **Weight:** Nutriswiss AG's delivery may fall short of or exceed the agreed quantity by weight by three (3) per cent. Nutriswiss AG shall indicate the shortfall or excess at the time of delivery. The weight recorded at the time of dispatch and upon arrival shall be definitive for the purposes of fulfilment and charging; each Party shall have the right to participate in the recording of the weight, either independently or through a representative. Axle-load weighing is not permitted. Animal feed: Nutriswiss AG's delivery may fall short of or exceed the agreed quantity by weight by three (3) per cent. Unless otherwise agreed, the weight at the time of dispatch shall be used for charging purposes.

2.3 **Freight parity:** In principle, the Buyer shall arrange collection of the products at the place of delivery (Incoterms 2010 FCA terms of delivery). The place of delivery shall be Lyss, unless otherwise agreed. Animal feed: Instead of using the agreed place of delivery, Nutriswiss AG may deliver the goods to a border point or other location in Switzerland, and designate this as the place of delivery. Any freight charge differences which may arise shall be credited or charged to the Buyer.

2.4 **Removal by lorry:** The Buyer shall bear all additional costs brought about by his actions. Nutriswiss AG shall assume no responsibility for deadhead journeys or costs, if lorries are ordered for unloading before the goods are ready to be removed.

2.5 **Quality:** For "sample" purchases, the appearance and analysis data of the goods shall, on average, match those of the buying sample. For purchases "on approval of sample", agreement shall be reached on the deadline for the Buyer's decision. If the Buyer does not inform Nutriswiss AG of his decision within the period agreed, the sample shall be deemed approved. The goods delivered shall be of robust and marketable quality, even without specific agreements. For "tel quel" purchases, the Buyer shall be obliged to take the goods regardless of quality, provided that the type of goods matches that specified in the contract.

**3. Force majeure and official measures**

Instances of force majeure shall release the Contracting Party thus affected from the need to comply with delivery/acceptance deadlines. The other Party shall be informed of the impediment immediately it is identified. Should the impediment persist for more than thirty (30) days after expiry of the contractual delivery or acceptance date, Nutriswiss AG and the Buyer shall have the right to withdraw from the contract within the following five (5) business days by means of a written declaration. Animal feed: Should fulfilment on schedule be prevented by elemental forces such as flooding or low water levels, by ice or by unforeseen circumstances such as an uprising, strike or lockout, then the deadline for fulfilment shall be extended by the duration of the impediment plus fifteen (15) days. Should the impediment persist beyond sixty (60) days, then Nutriswiss AG's obligation to fulfil shall be deemed lapsed.

Official measures adopted after conclusion of the contract shall give rise to an entitlement to compensation on the part of the affected Party. For purchases of goods on which duty is unpaid, the Buyer shall bear all the costs associated with customs clearance. If the contracted destination is changed, any resulting increase or reduction in costs shall be allocated according to the difference in the amount. Animal feed: All liabilities imposed on Nutriswiss AG as a result of official measures shall be reflected in the cost of the goods. Increased or reduced costs for animal feed from Swiss oil-extracting plants shall be calculated in line with the current practice at the oil-extracting plant in question.

**4. Notification of defects**

With respect to well-founded notification of defects, the Buyer shall have the right to a price reduction or replacement delivery. Rescission of contract shall be excluded. Complaints about the goods shall be made within five (5) business days of the arrival

of the goods. The right to replacement delivery shall be granted only if the goods are returned in the shipping container supplied. Should the goods contain defects which the Buyer himself could not detect without calling upon the services of an expert (hidden defects), then the Buyer shall retain the aforementioned warranty rights if he calls upon the services of an expert without delay and provides Nutriswiss AG with the notification of defects within three (3) business days of the defects being detected. Notification of defects shall be excluded in all circumstances once processing has commenced or the goods are forwarded from the original destination, unless neutral sealed samples exist for quality assessment purposes. The Parties have the right to participate in the sampling procedure. Statutory regulation shall apply with respect to warranted properties. Claims of injured parties under the Produkthaftungsgesetz (Swiss Product Liability Act) shall remain unaffected. Animal feed: Differences in quality, or complaints of any sort, shall be notified before further processing, resale or onward delivery of the goods, subject to the provisions of the Conventions regarding the taking of samples and explanatory reporting, as well as the instructions for sampling at the place of delivery, otherwise any claim by the Buyer shall lapse. In particular, the relevant Articles of the Conventions regarding notification of defects shall apply. Any shortfall in weight shall be determined at the place of delivery by the appropriately authorised bodies of the railway, the consignee or the carrier, in compliance with the relevant Articles of the Conventions.

**5. Liability and conditions of shipping and insurance**

The International Chamber of Commerce's Incoterms 2010, as valid upon conclusion of the contract, shall apply. Animal feed: Nutriswiss AG shall be liable exclusively for damages attributable to fault on its part. Liability shall extend exclusively to the replacement or remediation of the defective subject of the contract. There shall be no liability for damages which the injured party could reasonably have prevented from occurring or increasing, or for damages not caused by the delivery item itself. This shall, in particular, include production failure, loss of use, loss of orders, lost earnings and other direct or indirect damages.

**6. Payment**
**6.1**

**Deadline for payment:** Invoices submitted by Nutriswiss AG are to be settled in full, without any deduction whatsoever, within thirty (30) days. The offsetting of counter-claims shall be excluded. Animal feed: Invoices are to be settled in full, without any deduction whatsoever, within twenty (20) days.

**6.2**

**Interest on arrears and prepayments:** If the Buyer ceases payments, or if circumstances exist which are, in essence, the same as a cessation of payments, then all existing claims against him shall become due immediately. The Buyer shall be deemed in default automatically upon expiry of the payment deadline. Interest on arrears of five (5) per cent per annum shall be charged from this date. A reminder fee of CHF 20.00 shall additionally be invoiced upon dispatch of the third reminder. Nutriswiss AG shall have the right to demand prepayment for subsequent deliveries.

**6.3**

**Retention of ownership:** The goods shall remain the property of Nutriswiss AG until such times as all claims of Nutriswiss AG against the Buyer arising from the mutual business relationship have been paid, including conditional and future claims (= goods subject to retention of ownership). Nutriswiss AG shall be entitled to have the retention of ownership entered in the property register at the Buyer's residence. The Buyer shall furthermore be obliged to inform Nutriswiss AG without delay upon a change of the Buyer's domicile or registered office, or should third parties lay claim to the items delivered subject to retention of ownership. The Buyer shall maintain the delivered items in good order at his own expense during the period of retention of ownership, and shall insure the items against theft, breakage, fire, water damage and other risks for the benefit of Nutriswiss AG.

If a running account is operated, the retention of ownership shall serve as collateral for Nutriswiss AG's corresponding balance claim. The Buyer shall be permitted to process, mix or sell the goods which are subject to retention of ownership only on condition that he maintains detailed records of the location of such goods by quantity and value. Goods which are subject to retention of ownership shall always be processed on behalf of Nutriswiss AG, without this giving rise to any obligations for the latter. Nutriswiss AG shall be entitled to the ownership of the new item resulting from the processing. If the processing involves other goods which do not belong to Nutriswiss AG, Nutriswiss AG shall be entitled to joint ownership of the new item based on the ratio of the value of the goods subject to retention of ownership to the other goods processed at the time of the processing. The value of the goods which are subject to retention of ownership shall be understood throughout as the related purchase price charged to the Buyer by Nutriswiss AG. If the goods subject to retention of ownership are mixed or combined with other items, the Buyer shall thus transfer to Nutriswiss AG his rights to joint ownership of the goods, and shall retain the latter (hereinafter also goods subject to retention of ownership) on behalf of Nutriswiss AG.

The Buyer shall be entitled to resell the goods which are subject to retention of ownership in the normal course of business as long as retention of ownership continues to apply. He shall have no right to pledge or mortgage the goods. All customer receivables, including all ancillary rights, to which the Buyer is entitled, arising from resale, regardless of whether it occurs before or after processing, mixing or combining, shall thus be assigned by the Buyer to Nutriswiss AG by way of collateral. If the goods subject to retention of ownership are sold as a whole or - irrespective of condition - sold by the Buyer together with other goods not belonging to Nutriswiss AG for a total price, receivables from the resale shall be assigned corresponding to the amount charged by Nutriswiss AG to the Buyer for the relevant portion of the goods which are subject to retention of ownership. If the Buyer receives bills of exchange or cheques from his customer for the resale, he shall assign the claims against his customers to Nutriswiss AG based on the relevant bills of exchange and cheques, and in an amount equivalent to the claim assigned to Nutriswiss AG from the resale. Ownership of the bills of exchange and cheques shall thus pass from the Buyer to Nutriswiss AG, and the Buyer shall retain the original documents on behalf of Nutriswiss AG.

The Buyer shall be entitled to collect the assigned claims until such times as they are cancelled. In the event of cancellation, the Buyer shall provide all required information at the request of Nutriswiss AG, inform his customers of the claim transfer, and transfer the related customer bills of exchange and cheques to Nutriswiss AG. Should he default on a payment, the Buyer shall return the goods which are subject to retention of ownership to Nutriswiss AG at the latter's request. Furthermore, the Buyer shall inform Nutriswiss AG without delay, by telegram or telex, of any access by third parties to the goods which are subject to retention of ownership and/or to the receivables assigned to Nutriswiss AG.

**7. Severability clause**

Should individual provisions of these General Terms and Conditions of Sale and Delivery prove ineffective, the effectiveness of the remaining provisions shall not be affected thereby. The ineffective provision shall be replaced by a provision, the content of which most closely matches the intention of the original provision.

**8.**
**Place of jurisdiction**

The exclusive place of jurisdiction for all disputes arising from a contractual relationship with Nutriswiss AG, which do not fall within the remit of the arbitral jurisdiction of the Swiss Grain Exchange, shall be Lyss BE (the Swiss canton of Bern). Animal feed: Any disputes arising from this contract shall be judged definitively by the court of arbitration of the Swiss Grain Exchange in Lucerne.

**9.**
**Authoritative version**

Only the German-language version of the General Terms and Conditions of Sale and Delivery shall be authoritative.