Frankfurt, Aug 28th, 2013

GENERAL TRADE RULES FOR WOOD PULP

1. PREAMBLE. – These General Trade Rules shall apply, except when altered by express agreement accepted in writing by both the seller and the buyer.

2. QUANTITY: WEIGHT AND MOISTURE. – Unless otherwise stated, the word tonne or ton in this contract shall mean 1,000 kilogrammes air-dry weight, gross for net. The term air-dry shall mean ninety per cent (90%) absolutely dry pulp and ten per cent (10%) water. The pulp shall be packed in bales of declared uniform weight and production batch air-dry content. Each bale or unit shall bear a number or other identification mark to enable the time of manufacture to be determined by the seller in case of need.

3. QUANTITY: MARGIN. – For the convenience of chartering a margin of ten per cent (10%) more or less on the contract quantity is allowed. When two or more shipments are made under the same contract, the margin for the total contract quantity may not exceed ten per cent (10%) of what is due to be shipped with the last vessel to fulfil the contract.

4. QUANTITY: DISPUTES ABOUT AIR-DRY QUANTITY. – (a) If the buyer shall dispute the air-dry content of the pulp invoiced, he must do so within a time limit of thirty (30) days after the discharge of the goods at the place of destination and base his claim on a test which must show a difference of more than one per cent (1%) in content of the air-dry pulp. That being the case he may submit his claim to the seller and at the same time furnish the seller with the details of the buyer's test and with at least two names of suitable and competent analysts. If at the time there exists a valid list of analysts approved by the trade associations of the parties, the analysts shall in the first place always be chosen from that list.
(b) If the parties fail to agree on the exact quantity within seven (7) days of the seller receiving the claim and the details of the test, a retest shall take place as soon as the seller has chosen one of the proposed analysts. If the seller has not made his choice within fifteen (15) days of the receipt of the names, the buyer has the right to appoint one of the proposed analysts.
(c) The retest shall be made in accordance with existing TAPPI T 210 guidelines and ISO 638 standards or for grades not covered by such recommendations according to a method agreed on between buyer and seller. The seller shall have the right to be represented at the retest. Not less than one half (1/2) of the consignment in dispute shall be available for the retest otherwise no claim can be established. If the difference in net weight does not exceed one per cent (1%) as compared with the original invoice, the invoice shall stand as originally rendered. The analyst's findings shall be final and the party in error shall pay all expenses incidental to the retest.
(d) The buyer shall, however, in any case pay the invoice when due. Final adjustment shall be made when the retest is completed and according to the result of the same.

5. QUALITY. – (a) If the buyer shall dispute the quality of the pulp delivered, he must do so within the time limit of forty five (45) days after the discharge of the goods at the place of destination and within the same time state his claim as well as furnish the seller with the facts on which he is basing the said claim.

1.After much discussion, both Norman and Luigi were adamant that this should be longer. We said that the best solution would perhaps be 75 days from order release ?? i.e. "75 days from release to the customer". This should of course be linked to Clause 11
Frankfurt: (a) xx days from order release as specified in the Incoterms of each sales contract.
(b) or as agreed by the parties.

(b) If the buyer has made his claim as specified above and the parties cannot reach a settlement of the dispute, the matter shall be referred to arbitration. Not less than sixty per cent (60%) of the consignment under dispute shall be available for the drawing of samples, which can be determined by the arbitrators; otherwise no claim can be established.
(c) Should the pulp delivered be found on arbitration not to conform with the quality of the pulp according to the specification and/or sample sold on, but usable nevertheless by the buyer in his normal production, the arbitrators shall award an adequate allowance to the buyer, but should the pulp be found not so usable, the arbitrators shall award rejection. The arbitrators shall, however, be entitled to award rejection only if eighty per cent (80%) or more is left of the consignment in question.
(d) In the event of an award of rejection or of an allowance of twenty per cent (20%) or over of the c.i.f. value on account of quality having been made in favour of the buyer on two successive consignments of the same brand of pulp under this clause, the buyer has the right to cancel the balance of the contract if only one brand is contracted for, and, if more than one brand is contracted for, to cancel all future deliveries of the brand which is the subject of the award.
(e) The buyer shall promptly unload and properly store and cover by insurance any shipment made to the buyer pending a decision of the dispute.
(f) The buyer shall in any case pay the invoice when due. In case of a valid and justified claim of quality or damage that has not been taken to arbitration, the seller warrants to settle and finalise this claim within 14 days from received claim. Final adjustments shall be made when the decision of the arbitrators is given and according to the result of the same. If there is no claim finalization within 14 days, the buyer has the right to withhold payment on the portion of the shipment under claim dispute.

6. DELAYED PAYMENT AND OWNERSHIP OF THE GOODS. – (a) If the buyer delays payment, each time it becomes due, the seller shall be entitled to interest on such sum at five per cent (5%) above the official discount rate of the currency of the invoice. This is defined as the interest rate charged to commercial banks on loans they receive from the Central Bank.
(b) The supplier should formally notify delays in payment in seven (7) working days. If, after notification, the buyer is in default of payment after a further seven (7) working days, and the delay is not attributable to errors by transferring banks, the seller has the right to suspend deliveries against the contract.
(c) Delivered pulp shall – to the extent permitted by the law of the buyer's country – remain the property of the seller until the whole sum payable under the contract is paid.
(d) Subject to buyer's or seller´s country insolvency legislation, should the buyer or the seller become insolvent or go into liquidation or have a receiver appointed or otherwise be found to be in such financial position that it may reasonably be assumed that he will not be able to fulfil his obligations, the other party shall have the right to cancel the contract if the first party

has not within ten (10) days after given notice furnished a satisfactory guarantee for his fulfilment of the contract.

7. LIMITATION OF DAMAGES. – (a) If the pulp delivered is found lacking in quality and a rejection of the faulty pulp is agreed or awarded by arbitration, the seller is under obligation, without undue delay, to replace the faulty pulp at his own expense and reimburse the expenses the buyer may have incurred in receiving, storing and reloading the faulty pulp. In the event the product supplied does not meet the specification and in the reasonable opinion of the buyer the difference in specification/quality is critical enough for the buyer not to proceed with production, the buyer and the seller will explore the alternative options for the seller the replace the non-conforming product with appropriate product to enable the buyer to proceed with production.
(b) When either party is liable for damages to the other, these shall not exceed the loss, which the party in fault could reasonably have foreseen at the time of the conclusion of the contract nor include consequential damages.
(c) If one party alleges a breach of contract by the other party, he must take all necessary measures to mitigate the loss resulting from the breach, provided that and in so far as he can do so without unreasonable inconvenience or cost. If he fails to take such measures, the party in breach may claim a reduction in the damages. An alleged breach of the contract must be communicated in writing to the other party within the time limits set out in the contract or if no time limited has been set out, without undue delay.

8. RELIEFS (force majeure). – (a) The following shall be considered as cases of relief if they intervene after the conclusion of the contract – or when they have occurred before that time, if their effects were not clearly foreseeable before the conclusion – and they prevent, hinder or delay the buyer's production or acceptance of the pulp or the seller's production or delivery by agreed means of pulp; viz.: labour conflicts; faulty or delayed delivery of raw material and other commodities for the production; war; war risk; insurrection; blockade; requisition; embargo; currency restrictions; export or import prohibitions or restrictions; restriction in the use of power; general shortage of transport and materials; water shortage; fire; flood; storm; obstruction of railways; obstruction of navigation by ice at port of shipment; loss or detention at sea; non delivery; and any other circumstances or acts of God beyond the control of the parties.
(b) The buyer or the seller, as the case may be, may suspend performance under this contract on the grounds of relief, neither party being responsible to the other party for any damage resulting from such suspension. Shipment in transit from seller's mills must, however always be accepted by the buyer.
(c) In the event of suspension of performance for less than twenty (20) consecutive days, shipments shall be resumed as soon as practicable for the full contract quantity. When such suspension shall have continued for a period of twenty (20) consecutive days or more, the shipment omitted during the period of suspension can be cancelled without liability to either party, and subsequent shipments shall be resumed thereafter according to contract.
(d) The party wishing to claim relief by reason of any of the said circumstances shall notify the other party in writing, by email or by fax without delay on the occurrence of the intervention and on the cessation there of and, as soon as practicable, notify the other party to what extent the claim will necessitate a suspension.

9. DELAYED SHIPMENT CAUSED BY LATE ARRIVAL OF SHIP. – (a) Notwithstanding anything contained herein, in the event of a vessel which has been chartered in accordance with the terms hereof being delayed in arriving at the port of loading for a period not exceeding twenty one (21) days after the expiry of the time of shipment provided by this

contract, the seller shall immediately inform the buyer thereof and take all steps, at its sole cost, to deliver the goods within the agreed delivery time, from another port or warehouse.
(b)

This particular issue was probably originally designed from the early days when vessel rotations were not as tight as they are today and, as it refers to the loading port, it is therefore debatable as to whether this clause is actually applicable anymore and perhaps it should be changed to 'arrival' port? The issue of indemnification is also a problem. Typically the supplier will simply deliver from another warehouse/port ? No final agreement/consensus reached on this point!

10. CLAIMS. – All claims must be made in writing, by e-mail or by fax within forty five (45) days (except claims for payment of the invoice) after the discharge of the goods at the place of destination. No claims sent after the time shall be recognized.

This clause should obviously be tied in to the days specified in clause 5(a) i.e. 45, 60, 75 or 90 – whatever is agreed.

11. SHIPMENTS. – Each shipment under this contract shall be considered as a separate contract and default on one or more shipments shall not invalidate the balance of the contract except as herein otherwise provided. The present clause does not, however, affect the applicability of the clauses 3

12. COMPLIANCE WITH LAWS. - Both the seller and the buyer shall at all times act in full compliance (and ensure that the products and related sales documentation are also in compliance) with the applicable laws, regulations, permits, and other official requirements and the parties commit to provide relevant information in that respect when needed.

13. APPLICABLE LAW. – The contract and the legal relations between the buyer and the seller shall be governed by the laws of the Seller's Country, unless otherwise mutually agreed by both parties.

14. ARBITRATION. – All disputes arising in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one of more arbitrators appointed in accordance with the Rules. The place of arbitration shall be the country of the governing law. The arbitration proceedings shall be conducted in the English language.

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