



## **HAMLET PROTEIN INC.'s GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

### **1 Application and validity**

- 1.1 The following general conditions shall apply to all goods and services supplied by HAMLET PROTEIN INC. (Hereafter referred to as HAMLET PROTEIN).
- 1.2 Conditions or requirements of the buyer contained in the buyer's order stated in his general conditions of purchase or elsewhere, shall not bind HAMLET PROTEIN and are expressly rejected unless explicitly accepted by HAMLET PROTEIN in writing.
- 1.3 For the purpose of these general conditions, the following definitions shall apply:
  - "Order" means buyer's frame order.
  - "Sales Contract" means the Order as confirmed in writing by HAMLET PROTEIN.
  - "Call Off" means the buyer's delivery order under a Sales Contract.
  - "Confirmed Call Off" means the Call Off as confirmed in writing by HAMLET PROTEIN.

### **2 Offers and orders**

- 2.1 Unless otherwise stated in writing, HAMLET PROTEIN's quotation shall be effective and binding for a period of 48 hours as from the date and time of submitting the quotation. Quotations submitted on a weekend, shall be effective and binding for a period of 48 hours from the first business day thereafter.
- 2.2 In case of the buyer submitting an Order or Call Off, said Order or Call Off shall not be binding upon HAMLET PROTEIN until HAMLET PROTEIN has forwarded a Sales Contract or Confirmed Call Off (as the case may be) to the buyer or has delivered the goods to the buyer, whichever happens first.

### **3 Technical data and product information**

- 3.1 All information in brochures, publications, studies, etc., regarding prices, performance, or other technical data regarding goods offered for sale by HAMLET PROTEIN are binding only to the extent the Sales Contract explicitly refers to them.

### **4 Delivery**

- 4.1 Unless otherwise agreed in writing, the delivery terms are "EXW", (as such term is defined in the current edition of "Incoterms").



- 4.2 Normally, and unless HAMLET PROTEIN has informed the Buyer otherwise in writing, the goods shall be ready for shipment no later than 5 business days upon Confirmed Call Off for local deliveries and no later than 10 business days upon Confirmed Call Off for export goods.
- 4.3 The date of delivery stated in the Sales Contract or Confirmed Call Off is an estimate made to the best of HAMLET PROTEIN's knowledge. HAMLET PROTEIN shall notify the buyer of the actual date of delivery when it has been finally determined.
- 4.4 Unless otherwise agreed in writing, the quantity agreed upon in the Sales Contract shall be delivered in instalments evenly distributed during the term of the Sales Contract.
- 4.5 If a delivery has not been taken by the buyer on or before the delivery date, cf. 4.3 and 4.4, HAMLET PROTEIN is entitled at its own discretion to cancel or maintain in whole or in part the Sales Contract and/or the Confirmed Call Off. Furthermore, HAMLET PROTEIN is entitled to store, sell or remove the goods for the buyer's account and risk and to claim damages, including loss of profit. In case of HAMLET PROTEIN cancelling the Sales Contract and/or the Confirmed Call Off, HAMLET PROTEIN is entitled to compensation for costs incurred as well as loss of profit.

## **5 Delay**

- 5.1 If delivery is delayed beyond the date agreed upon or stated by HAMLET PROTEIN according to subsection 4.3 and 4.4 and the delay is not caused by circumstances beyond HAMLET PROTEIN's control as specified in Section 14, the buyer can by written notice to HAMLET PROTEIN demand delivery within a specified reasonable time limit.
- 5.2 If delivery is not made within the time limit provided by the buyer in accordance with subsection 5.1, and said time limit is exceeded by more than 5 working days, the buyer is entitled to cancel the delayed Confirmed Call Off. Any cancellation of the Confirmed Call Off shall be sent by the buyer to HAMLET PROTEIN in writing prior to delivery of the Confirmed Call Off.
- 5.3 The buyer cannot claim damages of any kind whatsoever including, but not limited to, damages for consequential loss suffered due to a delay.

## **6 Cancellation or modification of an agreement**

- 6.1 The buyer's cancellation or modification of a Sales Contract or a Confirmed Call Off is subject to HAMLET PROTEIN's written approval, and subject to the buyer reimbursing costs and losses incurred by HAMLET PROTEIN as a result of the cancellation or alteration, however as a minimum an amount equal to 15% of the agreed purchase price on the cancelled or modified part of the Sales Contract/Confirmed Call Off, excluding VAT, is due as an administrative cancellation fee.

## **7 Use of the goods**

- 7.1 In his use of the goods, the buyer shall observe all relevant national legislation including any regulation or requirement of governmental or other regulatory authority. Consequently, HAMLET



PROTEIN assumes no liability for any infringement of patents or violation by the buyer of any relevant legislation, regulation or requirement, which is due to his use of the goods. This shall apply even if HAMLET PROTEIN, its employees or agents have made statements or recommendations (whether before or after the purchase) relating to the goods.

## **8 Specifications/Warranty/Nonconformity**

- 8.1 HAMLET PROTEIN warrants that at the time HAMLET PROTEIN delivers the goods to the buyer that the goods will conform to the specifications for the goods expressly agreed to in writing by HAMLET PROTEIN. No agent, employee or representative of HAMLET PROTEIN has any authority to bind HAMLET PROTEIN to any affirmation. EXCEPT FOR THE ABOVE LIMITED WARRANTY, HAMLET PROTEIN MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW.
- 8.2 Immediately upon receipt of the goods, and before use thereof, the buyer shall make such examination of the goods as is required by proper trade practice. The buyer shall make sure that the goods meet all contractual requirements. If the buyer fails to conduct said proper examination timely, he shall lose his right to invoke any claim for nonconformity (including shortage), which could have been detected by the examination.
- 8.3 Without prejudice to subsection 8.2, claims of nonconformity must be made in writing and received by HAMLET PROTEIN not later than 14 calendar days after the nonconformity was or should have been detected. The complaint shall include a description of the alleged nonconformity.
- 8.4 Without prejudice to subsection 8.2 or 8.3, any claim regarding goods must be received by HAMLET PROTEIN within 6 months of delivery of the goods or the claim is waived.
- 8.5 No complaint can be made after expiry of the deadlines stipulated in 8.3 and 8.4.
- 8.6 HAMLET PROTEIN shall in no event be liable for nonconformity when arising after delivery of the goods by HAMLET PROTEIN, including as a result of inappropriate or improper use or storage.
- 8.7 In the case of a timely claim against HAMLET PROTEIN in connection with goods supplied by HAMLET PROTEIN, then HAMLET PROTEIN may choose, as its sole and exclusive obligation and buyer's sole and exclusive remedy, to within a reasonable time, deliver replacement goods, make subsequent deliveries of goods, repair nonconforming goods or grant the buyer a pro rata reduction in the purchase price, whereupon the rectification of the nonconformity shall be deemed final and the claim fully resolved.
- 8.8 With the exception of what has been stipulated above, HAMLET PROTEIN assumes no liability for any nonconformity (including shortages), defects or failure of performance, and the buyer cannot assert any other rights in case of default than the ones stated above.



## **9 Prices**

- 9.1 Unless otherwise agreed in writing, prices are based on the prevailing prices excluding V.A.T., costs, duties, etc., and the delivery terms are "EXW" (as such, term is defined in the current edition of "Incoterms").
- 9.2 HAMLET PROTEIN reserves the right at any time upon written notice effective immediately to revise or adjust an otherwise agreed or accepted price of any goods or products to compensate for increased cost of (i) utilities (such as natural gas and/or electricity) or (ii) transportation and logistics. Such revised or adjusted price shall apply to purchase orders received and goods and products comprised by confirmed purchase orders but not yet delivered at the time of HAMLET PROTEIN providing the written notice of such revised or adjusted price

## **10 Terms of payment**

- 10.1 Unless otherwise agreed in writing, payment shall be effected to HAMLET PROTEIN's account no later than 14 days upon delivery. Credit payment terms remain at all times subject to credit approval by HAMLET PROTEIN.
- 10.2 In case of late payment, HAMLET PROTEIN charges interest on any amounts overdue at the lower of the highest legally permissible interest rate or the reference rate of the Danish Central Bank added a rate of 8% per annum, in accordance with article 5 of the Danish Interest Act.
- 10.3 Should default be made by the Buyer in paying any sum due under any Sales Contract as and when due, HAMLET PROTEIN shall have the right either to suspend all further deliveries until the Buyer's default of payment shall have been made good or to cancel Sales Contracts so far as any goods remain to be delivered thereunder.
- 10.4 The buyer shall not withhold payment or make any deductions from the price of the goods in respect of claims that have not been approved in writing by HAMLET PROTEIN.

## **11 Retention of title**

- 11.1 HAMLET PROTEIN shall retain full and clear title to goods delivered hereunder, and ownership of the goods shall not pass to the buyer until full and final payment has been made.

## **12 Intellectual property rights**

- 12.1 The title to intellectual property rights in regard of the goods shall be vested in and solely allotted to HAMLET PROTEIN, including intellectual property rights resulting from the cooperation between the parties regarding the goods.

## **13 Storage and processing of information**



13.1 As part of HAMLET PROTEIN's handling of orders, HAMLET PROTEIN will receive personal data from the buyer or from representatives of the buyer. HAMLET PROTEIN handles such personal data as agreed in writing with the customer.

13.2 HAMLET PROTEIN stores and processes all information, documents, etc., in accordance with applicable rules on the handling of personal data.

#### **14 Force majeure**

14.1 Neither party shall be liable to pay damages or make compensation in any way for any delay or failure to perform any of its obligations when such delay or failure is due to force majeure.

14.2 Force majeure is defined as an act of god or an event or contingency outside the reasonable control of the party affected thereby. It shall include but not be limited to delay in the delivery of or defects in goods supplied by subcontractors, substantial price increases for such deliveries, war (declared or undeclared), revolution, riot, strike and lockout, labour disturbances, fire, flood, epidemic, earth-quake, explosion, blockade, embargo, unavailability of basic raw materials, lack of or failure of transportation, any unusual or unexpected acts of government or governmental agency, and other similar events.

14.3 Upon the occurrence of force majeure, the party suffering thereby shall promptly give the other party written notice thereof specifying the cause of force majeure and how it will affect the performance of its obligations.

14.4 If the delivery of goods is temporarily prevented owing to force majeure events, the obligation to deliver shall be suspended as regards the period during which the force majeure situation exists with the effect that the buyer shall not be entitled to cancel the Sales Contract. However, if contractual performance, delivery of goods or other duties are prevented by force majeure for a period of 120 consecutive days, then either party may terminate the obligations prevented by force majeure.

#### **15 Product Liability**

15.1 If the goods supplied by HAMLET PROTEIN cause bodily injury or damage tangible property when used in accordance with HAMLET PROTEIN instructions, industry standards and legal requirements, subject to subsection 15.2 below, HAMLET PROTEIN shall provide reasonable compensation therefor.

15.2 Notwithstanding the provisions of subsection 15.1 above, HAMLET PROTEIN will not be liable for (a) damage caused to objects intended for commercial use, (b) any consequential loss, loss of profits or other indirect loss, (c) injury or damage not caused by goods supplied by HAMLET PROTEIN, or (d) injury or damage to the extent caused by or contributed to by the negligence of another party, including as a result of another person failing to take reasonable precautions to limit injury or damage or the scope thereof. HAMLET PROTEIN may demand, and buyer shall pay, a proportion of the compensation, which is commensurate with buyer's conduct.

15.3 In the event of legal action being taken against HAMLET PROTEIN or the buyer with a claim for compensation based on the rules governing product liability, each party undertakes to let itself become involved in a pending case against the other party at the latter's request. The



relationship between HAMLET PROTEIN and the buyer shall, however, be settled pursuant to section 18 below.

## **16 Limitation of liability**

- 16.1 To the extent permitted by law, HAMLET PROTEIN shall never be liable for punitive damages, financial loss, consequential loss, loss of profit, loss of time, other indirect loss, or incidental or consequential damage whether arising from delay, from the supply of nonconforming goods or otherwise regardless of whether the potential damage or loss was foreseeable or whether HAMLET PROTEIN was advised of the potential damage.
- 16.2 HAMLET PROTEIN's liability shall in any case be limited to the price of the goods, which are the basis of the claim.

## **17 Right of set-off**

- 17.1 If the buyer has a financial claim towards HAMLET PROTEIN, the latter shall be entitled to set off such claim in whole or in part against any claim that HAMLET PROTEIN or one of HAMLET PROTEIN's subsidiaries or associated companies might have against the buyer or against one of the buyer's subsidiaries or associated companies.
- 17.2 Securities provided by the buyer to HAMLET PROTEIN or one of HAMLET PROTEIN's subsidiaries or associated companies shall secure any claim which HAMLET PROTEIN or one of HAMLET PROTEIN's subsidiaries or associated companies has or might in future have against the buyer or one of the buyer's subsidiaries or associated companies.

## **18 Jurisdiction and governing law**

- 18.1 The validity, construction and performance of the obligations of the parties shall be governed by and interpreted in accordance with the laws of Denmark provided with respect to purchase and sale transactions wholly conducted within the United States then laws of the State of Ohio, U.S.A. will govern.
- 18.2 Disputes, controversies, claims or differences which may arise between the parties out of, in relation to, or in connection with delivery of goods or services from HAMLET PROTEIN, or for the breach thereof, shall be settled by the competent court in Horsens, Denmark provided with respect to purchase and sale transactions wholly conducted within the United States then the courts in the State of Ohio, U.S. will have exclusive jurisdiction.

November 2019



**Hamlet Protein Inc** · PO Box 240 · 5289 Hamlet Drive · Findlay, OH 45840 · USA  
P 567-525-5627 · F 419-422-7379 · [info@hamletprotein.com](mailto:info@hamletprotein.com) · [hamletprotein.com](http://hamletprotein.com)

Hamlet Trading (Qingdao) Co., Ltd. · Add: Rm 2915, Block B, No. 222 Shenzhen Rd, Qingdao, Shandong, China ·