

**GENERAL TERMS AND CONDITIONS OF SALE OF SD GUTHRIE INTERNATIONAL  
ZWIJNDRECHT REFINERY B.V. (FORMERLY KNOWN AS SIME DARBY OILS ZWIJNDRECHT REFINERY B.V.) WITH  
REGISTERED OFFICE IN ZWIJNDRECHT, THE NETHERLANDS**

**1. GENERAL**

- 1.1 In these General Terms and Conditions of Sale "SDGIZR" is understood to mean SD Guthrie International Zwijndrecht Refinery B.V. (formerly known as Sime Darby Oils Zwijndrecht Refinery B.V.) and "Buyer" is understood to mean the party who purchases products from SDGIZR. SDGIZR and the Buyer shall hereinafter be jointly referred to as the "Parties".
- 1.2 These general terms and conditions apply to all arrangements made between the Parties with regard to the purchase and/or delivery of the SDGIZR products, including but not limited to the Quotations, Sales Confirmations, Confirmations of Contract, Orders, Order Confirmations, Specifications and Invoices forming part thereof or arising therefrom (hereinafter referred to as the "Agreement").
- 1.3 The applicability of any general (purchasing) terms and conditions of the Buyer is expressly rejected by SDGIZR and such terms and conditions do not apply to the Agreement.
- 1.4 The documents "Shelf Life and Storage" and "Supply Chain Management Boxed Products", which may be downloaded from [www.sdguthrie-international.nl](http://www.sdguthrie-international.nl) apply to the Agreement. SDGIZR has the right to change these documents from time to time. The Buyer agrees that the most recent version of the documents automatically applies to the Agreement, unless agreed otherwise between the Parties.
- 1.5 SDGIZR has the right to change these General Terms and Conditions of Sale from time to time. The most recent version of the General Terms and Conditions always applies to the Agreement and can be viewed and downloaded on our website, [www.sdguthrie-international.nl](http://www.sdguthrie-international.nl).

**2. CONFIRMATION OF CONTRACT**

- 2.1 Unless explicitly stated otherwise by SDGIZR, Quotations of SDGIZR are valid until 16:30 hours (GMT +1) on the date on which they have been issued. SDGIZR retains the right to withdraw or change the Quotations.
- 2.2 All prices stated by SDGIZR are in EURO and per MT and are exclusive of VAT and other levies or costs, unless agreed otherwise. VAT and any other levies and/or costs shall be borne by the Buyer.
- 2.3 The agreed conditions will be laid down in the Confirmation of Contract by SDGIZR.
- 2.4 Unless agreed otherwise, the volume to be purchased by the Buyer will be divided equally over the agreed period in the Confirmation of Contract, with the principle of an equal division per week. This division will hereinafter be referred to as the "Allocation". Lead times can vary per product and need to be agreed upfront. The volume and the Allocation, which have to be called off by the Buyer by separate Orders, are binding to the Parties. The Parties can only deviate from this by mutual consent.
- 2.5 The Buyer cannot terminate a (part of the) Confirmation of Contract unilaterally. The Buyer can only terminate the Agreement (partially) due to well-founded and urgent reasons and with the prior written approval of SDGIZR, in which case SDGIZR will retain the right to compensation of the damage it incurs, which will be calculated as the difference between the agreed sales price plus the interest thereon less the actual sales revenues from the sale of the outstanding volume to a third party. In addition, the Buyer will compensate SDGIZR for the costs of the booked production capacity of SDGIZR's plant, if any, the price decreases of or any other negative effect on the raw materials, the storage costs, the unearned gross profit and the handling costs, which costs will be calculated by SDGIZR. The Buyer will also be held to pay € 100 per MT to SDGIZR, without prejudice SDGIZR's right to claim damages.

**3. ORDERS AND ORDER CONFIRMATION**

- 3.1 The production and delivery of products by SDGIZR will be effectuated based on Orders placed by the Buyer and confirmed by SDGIZR in the Order Confirmation. Unless otherwise specified by SDGIZR, the Orders must be received by SDGIZR at the latest on Thursday at 10:00 hours (GMT +1) in the week prior to the agreed date of loading. For the avoidance of doubt, a week starts on Sunday 8.00 hours in the morning. The Orders must state at least the following: SDGIZR contract number and price, ordered volume, SDGIZR product name, delivery address, date and time of the requested delivery, customs documents, applicable Incoterm and specification of transportation (e.g. FCA, CIP, uncooled transportation) and order number of the Buyer.
- 3.2 The Orders can no longer be changed after receipt by SDGIZR, and the Buyer cannot enforce delivery by SDGIZR before receipt of the Order Confirmation.
- 3.3 Errors, inaccuracies and incompleteness in the Order Confirmation should be communicated to SDGIZR in writing within 24 hours, in the absence of which the Order Confirmation is binding. In the event of any conflicts between the Order and the Order Confirmation, the Order Confirmation prevails.
- 3.4 SDGIZR reserves the right to suspend the delivery of the products until the Buyer has fulfilled all its payment obligations towards SDGIZR.
- 3.5 The Buyer may change or cancel an Order, if it compensates all costs incurred by SDGIZR because of such change/cancellation. SDGIZR has the right to charge € 2,500 to the Buyer if the production of the relevant Order has started and € 150 if the production of the relevant Order has not started, without prejudice SDGIZR's right to claim damages.
- 3.6 The Buyer is held to place Orders in accordance with the minimum order quantity agreed in the Confirmation of Contract. If and insofar as the delivery of an Order for a smaller volume than the minimum order quantity is confirmed by SDGIZR, SDGIZR will be entitled to increase the agreed price for transport and to charge the costs of the degradation of the non-purchased volume to the Buyer. The degradation costs will be calculated by SDGIZR per product.
- 3.7 If the Buyer fails to comply strictly with the Allocation, SDGIZR will be entitled to terminate the Agreement and SDGIZR is entitled to compensation of the costs of the volume that has not been called off in accordance therewith (hereinafter referred to as the "Outstandings"), which compensation will be charged monthly. These costs amount to € 5 per MT per month as well as full compensation of the costs for the storage of raw materials and/or packed goods and/or flakes, due from the month following the month in which the products would have been delivered according to the Allocation.
- 3.8 Notwithstanding Article 3.7 SDGIZR will also have the right to sell the Outstandings to a third party immediately after expiry of the time limit, in which case SDGIZR shall retain the right to compensation of the damage that it incurs, which will be calculated as the difference between the sales price of the Outstandings agreed with the Buyer plus the interest thereon less the actual sales revenues of the sale from the Outstandings to the third party.

#### **4. PRODUCTION**

- 4.1 SDGIZR shall set Specifications for each product, consisting of the Product Data Sheet (hereinafter referred to as "PDS") and the Product Quality & Safety Document (hereinafter referred to as "PQSD"), which apply to the Agreement.
- 4.2 SDGIZR warrants that the product will meet the Specifications stipulated in the PDS after the product has been manufactured and made available for shipment at the SDGIZR plant in Zwijndrecht, the Netherlands, unless the Parties agree that the values of the products may fall outside the value range stated in the Specifications. SDGIZR shall analyse the product prior to shipment according to the parameters as set out in the PDS. The results of this analysis will be reported in the Certificate of Analysis (hereinafter referred to as "CoA"), which will constitute prima facie evidence between the Parties. SDGIZR does not bear any risk of any changes to the quality, Specifications or conformity of the Product during or after shipment from the SDGIZR plant and excludes all liability for such change. This provision prevails over the other provisions in the sales documents, any general terms and conditions, any applicable Incoterms or any other delivery terms and any other applicable provisions.
- 4.3 SDGIZR has the right to change the Specifications from time to time. The Buyer agrees that the most recent version of the Specifications is automatically applicable to the Agreement, unless agreed otherwise between the Parties. Upon request, the Buyer will sign the Specifications. In the absence of such signature, the Specifications are deemed to be accepted after 7 days after the date of dispatch.
- 4.4 Once per year, SDGIZR shall send the Buyer a survey of the then applicable Specifications.
- 4.5 SDGIZR has the right to invoice any extra costs for production and transport on a Saturday and Sunday and/or on a public holiday in the Netherlands to the Buyer.

#### **5. DELIVERY**

- 5.1 Parties acknowledge and agree that SDGIZR may deliver 5% more or less than the ordered volume, unless the ordered volumes is less than 10MT, than the delivered volume may deviate 500 kg.
- 5.2 Upon delivery of the products, the Buyer is obliged to inspect the products and to communicate any complaints, inaccuracies or defects to SDGIZR within 48 hours after delivery and by written notice failing which the products will be deemed to be accepted and claims against SDGIZR relating to these complaints, inaccuracies or defects will lapse. In the event of a dispute concerning the complaint, an independent expert appointed by the Parties will investigate the products. The result of the investigation will be binding upon the Parties. The party who fails the investigation shall bear all costs of the investigation.
- 5.3 If the Buyer wrongfully refuses the products, SDGIZR will be entitled to compensation of all costs that it has incurred and of all damages that it has suffered. The does not alter any other right falling to SDGIZR in that case.
- 5.4 If the products do not meet the Specifications, this will only constitute a failure on the part of SDGIZR to meet its obligations arising from the Agreement once SDGIZR has been sent a written notice of default granting it a reasonable period of time in which to repair or replace the relevant products. If SDGIZR fails to deliver the repaired or replaced products, the Buyer will have the right to withdraw or terminate the Order relating to said products.
- 5.5 If the Parties have agreed upon a delivery term other than FCA Zwijndrecht or FCA Rijkevoort, SDGIZR has the right to charge the Buyer transport costs for any waiting time in excess of two hours after the latest agreed time of delivery, unless the Parties have mutually agreed on a new time of delivery.
- 5.6 If the Parties have agreed FCA Zwijndrecht, FCA Alblasserdam, FCA Ouderkerk a/d IJssel or FCA Rijkevoort as delivery term, the Buyer warrants that the selected carrier will make use of transportation that meets the applicable legislation and that is clean, dry, sealed and exclusively suitable for food products before proceeding to loading the products.
- 5.7 SDGIZR is entitled to give instructions to the carrier selected by the Buyer with a view to facilitating an orderly and safe delivery. The Buyer shall require the carrier to follow the instructions of SDGIZR. Upon request, written instructions will be provided by SDGIZR.
- 5.8 The tanks belonging to the carrier selected by the Buyer will not arrive for loading more than half an hour before or more than half an hour after the agreed time (hereinafter referred to as the "Margin"). If the tanks are not available within the Margin, SDGIZR may determine the time at which the products will yet be loaded at its sole discretion, without such entitling the Buyer to compensation of its waiting costs. In the event of stagnation of SDGIZR's manufacturing process, SDGIZR will be entitled to a fixed compensation of € 50 per hour and SDGIZR will have the right to store the product of the Buyer elsewhere. In that case SDGIZR is entitled to charge the Buyer for the costs thereof. Save the foregoing, the Buyer is liable towards SDGIZR for all and any other damage (including consequential damage) and costs arising from the availability of the tanks outside the Margin.
- 5.9 The place of delivery and the transfer of the risk of the products will be determined by the specific Incoterm agreed between the Parties.
- 5.10 If the agreed delivery time is exceeded, this will not in itself constitute default on the part of SDGIZR. In such case the Buyer should send SDGIZR a written notice requiring that delivery be made within a reasonable period, failing which the Buyer has the right to withdraw or terminate the Order in question (or the unperformed part thereof) by written notice. The Buyer will not have this right if the Buyer is in default for its part.
- 5.11 With the exception of the delivery of lecithin, SDGIZR shall load the products that are transported by tank vehicle in accordance with the cross-contamination table, which may be downloaded from [www.sdguthrie-international.nl](http://www.sdguthrie-international.nl). The Parties may agree to deviate from the table as a result whereof the cleaning costs will be charged to the Buyer.
- 5.12 The weighed weight of the tank vehicle on the weighbridge at the SDGIZR plant is binding between Parties. Regardless of the foregoing, in the event the difference between the weighed weight of the tank vehicle on the weighbridge of SDGIZR and the weighed weight on the weighbridge of the Buyer is 150 kg or more up to a maximum difference of 2% of the weighed weight of the tank vehicle on the weighbridge at the SDGIZR plant, or represents a value of € 100 or more up to a maximum of 2.5% of the value of the products, the Parties shall start a mutual investigation into the cause of the difference. Depending on the result of the investigation, SDGIZR may, at its sole discretion, partially credit the Invoice.
- 5.13 In the event that the crystallised oil remaining in the tank vehicle (hereinafter referred to as the "Residue") weighs more than 150 kg or represents a value of more than € 100, the difference will be credited by SDGIZR to the Buyer. A smaller Residue will not be credited.

#### **6. INVOICING AND PAYMENT**

- 6.1 In the context of clause 5.1, the Buyer will pay the exact volume delivered.
- 6.2 Unless agreed otherwise, a term of payment applies of 30 days after the Invoice date.
- 6.3 Parties are obliged to provide each other with their correct VAT registration number, failing which SDGIZR will automatically increase the Invoice amount by VAT and any other amounts which Buyer may owe and SDGIZR will have the right to suspend all further deliveries until such time as the Buyer has provided its VAT registration number.
- 6.4 In the event that SDGIZR has agreed pre-payment with the Buyer, the pre-payment must be received by SDGIZR at the latest 2.5 working days before loading, at 13:00 hours (GMT +1). After receipt of the payment, SDGIZR will release the products relating to the relevant Order for production. In the event that the payment is not received or not received in time, SDGIZR will have the right not to carry out the Order.
- 6.5 If the Buyer fails to pay the invoiced amounts within the payment term, SDGIZR will be entitled to statutory commercial interest as referred to in Article 6:119a of the Dutch Civil Code and to reimbursement of all costs that it incurs to collect its claim, including but not limited to the costs of legal assistance.
- 6.6 Any inaccuracies in the Invoice must be reported to SDGIZR within 5 working days after the date of Invoice, in the absence of such a report the Parties will assume the accuracy of the sent Invoice.
- 6.7 In the event of a dispute regarding an Invoice the Buyer must pay the undisputed part of the Invoice within the applicable payment term. As soon as the dispute has come to an end, the Buyer must pay any unpaid portion to SDGIZR within applicable payment term after settlement of the dispute.

- 6.8 If, during the Agreement, SDGIZR has to make payments such as taxes, import, transit or export duties, product board levies, etc. which result from measures taken by any government or by any other government body or semi-government body and which were not due at the time when the Agreement was concluded or if the said taxes, duties or levies, etc. are modified or rescinded since the Agreement was concluded, SDGIZR will be entitled to charge the Buyer for the extra payment.

## **7. RESERVATION OF TITLE**

- 7.1 As referred to in Article 3:92 (2) of the Dutch Civil Code the ownership of the products delivered by SDGIZR will be reserved to SDGIZR until the Buyer has paid the purchase price including all costs and taxes due.

## **8. FORCE MAJEURE**

- 8.1 If, because of circumstances beyond its control (force majeure), then SDGIZR will be entitled, without being in default, to postpone its obligations such as the delivery of the goods until such time as the situation of force majeure has terminated.
- 8.2 If a situation of force majeure lasts for longer than three months, then both SDGIZR and the Buyer will be entitled, by means of a simple notification to the other party, to unilaterally terminate the as yet unperformed part of the Agreement without legal proceedings being required.
- 8.3 Force majeure is hereby understood to mean in any event, but not exhaustively: war, revolution, riots, fire, weather conditions, floods, transport restrictions, illness, government measures including import and export restrictions, crop failure, disruption in the supply or provision of raw materials, energy or required operating resources, including non-performance on the part of suppliers from whom SDGIZR obtains goods or services, strike, faults in or damage to machines, as well as any other disruption within SDGIZR's business.
- 8.4 Force majeure is further understood to include every circumstance beyond SDGIZR's control - regardless of whether this could have been foreseen at the time the Agreement was concluded - which temporarily or permanently prevents the performance of the Agreement or makes it substantially more difficult or more expensive to perform.
- 8.5 The foregoing provisions will also apply in cases where such circumstances have been caused by SDGIZR's personnel.

## **9. LIABILITY AND WARRANTY**

- 9.1 SDGIZR will never be liable for any damage or loss on the part of the Buyer due to a breach of Contract or a non-contractual liability, unless the damage or loss has been caused by an intentional act or wilful recklessness on the part of SDGIZR or its management.
- 9.2 Notwithstanding clause 9.1 any liability on the part of SDGIZR for damage, including non-contractual liability, will be limited to an amount equal to the net Invoice value of the products which have not been delivered, not been delivered in good time or which have been delivered in a defective condition. In that case SDGIZR's liability will be limited to damage to the Buyer's property and to personal injury. SDGIZR will never be liable for consequential damages and loss of profits or loss of turnover and loss of goodwill.
- 9.3 Unless agreed otherwise, the Buyer is held to initiate any claims on SDGIZR by virtue of the Agreement within 2 weeks, on penalty of the right to do so lapsing.

## **10. PRESENCE OF MINERAL OIL AROMATIC HYDROCARBONS (MOAH)**

- 10.1 On April 21, 2022, a Summary Report has been issued by the European Commission and the EU Member States in regard to the presence of Mineral Oil Aromatic Hydrocarbons (MOAHs) in food (**'the Summary Report'**). The contents of the Summary Report, more specifically the limits on the presence of MOAH, are not implemented in mandatory EU and/or applicable national legislation. Should for SDGIZR applicable mandatory EU, applicable national legislation and/or any other mandatory rules of law implementing MOAH-limits come into force, the following applies:
- a) SDGIZR is striving to ensure that the legal MOAH-limits are not exceeded in its products and is taking measures in this regard. Buyer is obliged to take all necessary measures in its performance of the Agreement to ensure that the above limits are not exceeded in the end products that are produced with the good(s) that form(s) part of the Agreement.
- b) SDGIZR shall not be liable for any damage and/or loss's incurred by Buyer as a result of the fact that the goods that form part of the Agreement are contaminated with MOAH whereby such contamination exceeds the mandatory EU and/or applicable national legal MOAH-limits plus - insofar it will be applicable pursuant to law or Dutch policy - measurement uncertainty as set by the accredited laboratory carrying out testing with a maximum of 50%. This includes but is not limited to direct damage, consequential damage, loss of profit, loss of turnover and/or loss of goodwill, fines as well as the costs of legal assistance both in and out of court against any claims arising out of exceedance of the mandatory EU and/or applicable national legal MOAH-limits. At all times and under any circumstances any liability of SDGIZR shall be limited (i) to the invoice value of the goods, with MOAH quantities exceeding mandatory EU and/or applicable national MOAH-limits sold by SDGIZR to Buyer or (ii) the amount of EUR 50,000 whichever is the lowest.
- c) If it is found that the legal MOAH-limits are exceeded as a result of an act or omission by the Buyer, Buyer shall indemnify and keep SDGIZR harmless against any and all damages and/or loss's incurred by SDGIZR as a result thereof, including but not limited to direct damages, consequential damages, loss of profits, loss of turnover and/or loss of goodwill, fines as well as the costs of legal assistance both in and out of court against any claims arising out of an exceedance of the legal MOAH-limits.
- 10.2 In due time, the contents of the Summary Report shall very probably be implemented in mandatory legislation that shall apply to the Agreement accordingly. As soon as the contents and the date of entry into force of this legislation is known, Buyer and SDGIZR shall, in joint consultation, if necessary, amend the Agreement accordingly to ensure the Agreement is in line with this legislation effective from the date of entry into force of the mandatory legislation.

## **11. MISCELLANEOUS**

- 11.1 The Buyer is held not to disclose any information of a confidential nature regarding SDGIZR for the term of the Agreement and for at least one year after termination of the Agreement. Confidential information is to be understood in any event as the Specifications and the corresponding PDS and PQSD. In the event the Buyer breaches this confidentiality clause, the Buyer will owe to SDGIZR a financial penalty of € 1,000 per breach and an amount of € 250 per day that the breach continues, without such prejudicing SDGIZR's entitlement to damages.
- 11.2 The Buyer cannot transfer its rights and obligations under the Agreement to a third party without the prior written consent of SDGIZR.
- 11.3 Any provisions that are void or voidable will not affect the validity of the other provisions.

## **12. APPLICABLE LAW AND JURISDICTION CLAUSE**

- 12.1 The Agreement has been construed in accordance with and is governed by Dutch law, and the competent District Court of Rotterdam has exclusive jurisdiction on any disputes arising from the Agreement.
- 12.2 The provisions of the Uniform Act on the International Purchase of Corporeal Movables (LUVI, The Hague, 1 July 1964) and the United Nations Convention on International Purchase Agreements (CISG, Vienna, 11 April 1980) do not apply, except were agreed otherwise in writing.