

1. ACCEPTANCE OF ORDER

All orders are accepted by the Seller subject to these Terms of Business which unless otherwise mutually agrees in writing shall override any other terms or conditions stipulated or referred to by the buyer and are the only terms and conditions upon which the seller sells or supplies the goods. The contract for the sale of the goods shall be deemed to have been made when goods are despatched to or collected by the buyer. Contracts for delivery by instalments shall be deemed to be one indivisible contract.

2. TERMS

- a. The place for payment is deemed to be the address of the seller as stated on the invoice or statement.
- b. Unless otherwise agreed in writing between the seller and the buyer payment for the goods shall be made in accordance with the terms of the invoice or statement delivered to the buyer.
- c. Without prejudice to the foregoing the seller may require the buyer to make payment in advance of delivery.
- d. The seller may at any time require the buyer to advance adequate security for the payment of all amounts due or to become due.
- e. Where payment is to be made by instalments the failure of the buyer to pay any instalment on the due date shall entitle the seller to treat such failure as a repudiation of the entire contract and to recover damages for such breach of contract.
- f. Without prejudice to its other rights hereunder the seller may charge interest in accordance with the terms and at the prevailing rate specified in the seller's invoice or statement on any sum or sums outstanding from the date on which such sum becomes due for payment up to the actual date of payment and both before and after any judgement for such sum such interest to be due and payable together with payment of the principle sum due.

3. PRICE

The price payable by the buyer for the goods shall be the seller's price ruling at date of despatch or collection by the buyer.

4. DELIVERY

- a. Delivery of the goods shall take place:
 - i. Where the seller undertakes the delivery of the goods – when the goods are unloaded off the seller's vehicle or other transport at the address specified by the driver or
 - ii. Where the buyer undertakes the collection of the goods – when the goods are loaded on to the buyer's vehicle or other transport at the address of the seller.
- b. If no time for the delivery is specified in the contract the buyer shall be bound to accept the goods when they are ready for delivery by the seller.
- c. The seller shall not incur any liability or obligation to the buyer in respect of any failure to deliver or delay in delivery.
- d. If after the commencement of the contract the buyer refuses to accept delivery of the goods or fails to require delivery or to collect the goods as previously arranged by the buyer shall be deemed to have repudiated the contract.

5. TITLE OF THE GOODS

- a. Notwithstanding the risk in the goods shall pass to the buyer on delivery property in all the goods comprised in the contract or any other contract between the seller and the buyer and all legal beneficial ownership thereof shall remain with the seller notwithstanding despatch of the goods until payment in full for all the goods has been received by it in accordance with the terms of this contract or until such time as the buyer sells the goods to its customers by way of bona fide sale of the at full market value. If such payment is overdue in whole or in part the seller may (without prejudice to any of its other rights) recover or resell the goods or any of them and may enter upon the buyer's premises by its servants or agents for that purpose. Such payments shall become due immediately upon the commencement of any act or proceeding in which the buyer's solvency is involved.
- b. Until the seller is paid in full for all the goods the relationship of the buyer to the seller shall be fiduciary in respect of the goods or other goods in which they are incorporated or used if the same are sold by the buyer the seller shall have the right to trace the proceeds thereof according to the principles in *Re: Halletts Estate 1880 13CH D696*. Alike right for the seller shall apply where the buyer uses the goods in any way so as to be entitled to payments from a third party.

6. TOLERANCE

Both buyer and seller responsible for ordering and delivering each month with a tolerance of 5% or 15 tonnes (whichever is the lesser quantity) more or less than the agreed monthly tonnage detailed in clause 5. Unless otherwise agreed between the parties, any quantity collected/delivered in excess of the upper tolerance shall be settled by mutual agreement or otherwise by arbitration. If the seller delivers less than the minimum quantity permitted by the tolerance he shall be deemed to be in default and shall compensate the other party in accordance with the Default clause herein and calculation of damages shall be against the mean contract quantity. Where the buyer cannot take delivery of the agreed contracted tonnage, the Seller has the option of rolling over the tonnage either within or following completion of the contract period or placing the Buyer in default, the Buyer then to compensate the seller in accordance with the default clause herein and calculation of damages shall be against the mean contract quantity.

7. CLAIMS

- a. Claims based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be advised as soon as possible and confirmed by rapid written communication within two business days of either delivery or from when the risk passes in accordance with clause 9. (b). Methods of rapid written communication for the purposes of this clause shall be defined as either fax, e-mail, or other electronic means, or by letter sent by first class post no later than the subsequent business day. In the event of this contract being one of a series of contracts, all claims shall be passed on without delay after receipt and if so passed on shall be deemed to be proper claims from Buyer to Seller as required by the provision of this clause whether within the two business days period or not.
- b. All claims other than those in (a) above must be notified so as to be received by the Seller within 90 consecutive days from the last day of the period of delivery with the same proviso as to series of contracts as in (a) above.

8. ARBITRATION

Any dispute (other than a claim for an unpaid debt or as provided under (c) below) arising out of this contract shall be referred to arbitration as follows:

- a. unless otherwise agreed the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Confederation), and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.
- b. Where a dispute as to quality arises regarding goods which are the subject of two or more contracts identical terms as to date and price, then any arbitration may, with the consent of all parties concerned, be held as between the first seller and the last buyer in the series of transactions as if they were the only contracting parties and any award then made shall, subject to the rights of appeal as provided in the relevant rules, be binding on all intermediate parties in the series of transactions and may be enforced by any such intermediate party against his intermediate contracting party as if separate award had been made under each separate contract. All such intermediate contracts shall be made available to Arbitrators.
- c. If a dispute involves legal or technical problems or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve, or if any necessity involves a third party who is not subject to arbitration proceedings has lapsed may, in writing, request the other to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should consent be unreasonably withheld or no answer received within twenty eight days the party making the request shall be at liberty to commence court proceedings leaving it to the other party, if the other party so wishes, to apply for a stay of proceedings invoking the arbitration clause. The court will then decide whether the arbitration or the court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started not continue to run) from the date of such request until the court has given a final ruling (this includes any appeals) as to the proper venue for the dispute to be heard, providing court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.

9. TIME LIMITS FOR CLAIMING ARBITRATION

Arbitration shall be claimed in relation to quality, quality or condition within 28 days from the arrival of the goods at their ultimate destination in the United Kingdom or from when risk passes in accordance with clause 9(b) and in relation to other claims within 90 consecutive days of the last day of the contract period. Where the contract giving to the arbitration is one of a series of contracts a reasonable extension of time to commence arbitration proceedings will be allowed to those in the "string". In the case of disagreement as to what constitutes 'a reasonable extension' this will be referred to the arbitrators as a preliminary issue. Subject to any special conditions relating to leave being granted to institute court proceedings contained in the arbitration rules of Agricultural Industries Confederation Limited, the making of an award shall be a condition precedent to any right of action by either party for any reason claiming under either of them, so that if arbitration regarding any claims are not instituted within the time limit prescribed all causes of action relating to that claim, whether by way of arbitration or in any courts of law are deemed time barred and waived.

10. LIABILITY

Whenever a product is ordered by the Buyer under a brand name and is delivered to them by the Seller in the manufacturer's original packaging then under no circumstances whatsoever does the seller accept any greater liability for any injury damage and/or loss that the product may cause to the Buyer than is accepted by the manufacturers of the said product themselves. Without prejudice to the generality of the above disclaimer of liability the Buyer should note that manufacturers of goods do not normally accept any liability for injury damage and/or loss arising from the use of goods manufactured by them if the use to which the goods are put is not one of those set out on their own label or in the technical instructions delivered with the said goods nor will they do so if the Buyer has failed to observe the instructions for use supplied with the goods.

Save for liability for death or personal injury caused by the negligence of the Seller and/or such servants or agents of the Seller for Whom they are deemed in law to be responsible, or under provisions of the Consumer Protection Act 1987 (or successor thereto) and/or any liability for defective goods under any United Kingdom Statute or Regulations made thereunder which imposes specific conditions and/or warranties and provides that these cannot be excluded by the parties to the contract, the Seller shall not be under any liability to the Buyer nor to the third party claiming through them in respect of defects in goods delivered whether patent or latent, nor for any injury damage and/or loss resulting directly or indirectly from such defects howsoever caused and except as provided above no warranty or condition whether express or implied by law statute or custom of trade as to the quality or fitness for any particular purpose or merchantability of such goods is given. The Buyer holds himself out as entering into this contract in the course of business.

The Seller when supplying goods under a brand name (whether such goods are manufactured by the Seller or by a third party) warrant only that such goods will be merchantable under their original description and will be fit for any particular purpose for which they have at any time been held out to be fit under that brand name. It is neither a condition nor a warranty of this contract that goods sold under the said brand name will at all times consist of the same ingredients and/or the same proportion of ingredients. The Seller accepts no liability whatsoever for any injury damage and/or loss of whatever description and whether direct or consequential which such change may cause to the Buyer.

Without prejudice to the generality of the disclaimer of liability above the Seller at their sole discretion undertakes to replace allegedly defective goods or to refund to the Buyer up to the invoice price of such goods where the Seller is satisfied that they are responsible. Under no circumstances whatsoever shall the Seller's liability under this clause exceed the invoice price of any allegedly defective goods. Save as already elsewhere provided and for such replacement and/or refund the Seller shall not under any circumstances whatsoever be liable to the Buyer for any loss and/or damage whether direct or consequential.

11. NON-AVAILABILITY

The agreed contract price of the compound feed which is the subject of this contract depends upon the necessary ingredients continuing to be available to the seller. Should "force majeure" be invoked against the seller by any of his own suppliers and the ingredients in question not be replaceable at a similar price, the seller will immediately inform the buyer and offer him either replacement of the ingredient in question from a different source but a contract price adjustment to be agreed or reformulation of the compound feed maintaining the original price. If the ingredient is not a replaceable at all the buyer will not accept reformulation, the seller can himself invoke the force majeure clause in this contract as also if the parties are unable to agree a new price prior to manufacture of the compound feed to which this contract refers.

12. FORCE MAJEURE

Neither the buyer or the seller shall be responsible for delay in delivery of goods or any part thereof occasioned by any act of god, action by any government, strike (including dock and/or shipping strikes within the United Kingdom), lock out, combination of workmen, breakdown of machinery, power failure or fire, provided that the party invoking this clause despatches written notice to the other party within 5 business days of the occurrence, or not later than 5 business days after the beginning of the contract period, whichever is the later. In the case of such information shall be passed on without delay. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the contract period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.

13. ADVICE

Unless otherwise agreed between parties, advice by the seller to the buyer shall not form part of the contract. The seller accepts no responsibility for any advice given to the buyer by their employees, servants or agents and accept no liability for any injury, loss and/or damage resulting directly and/or indirectly from any such advice. Without prejudice to the above if the goods the subject of this contract are manufactured by a third party and are delivered with the manufacturers recommendations for the use of the goods in question and the advice given differs from other advice received by the buyer from whatsoever source the buyer must either follow the manufactures instructions or, if in any doubt, apply to the manufactures for further advice. Failure to do so may lose the buyer any protection from warranties given by the manufacturers to all recipients of the said goods and the seller accepts no liability whatsoever for any injury, damage and/or loss suffered by the buyer who has failed to follow the manufacturer recommendations.

14. AGROCHEMICALS, ADDITIVES AND ENHANCERS

The seller warrants that such goods comply with accepted tolerance levels and comply with the specification stated in the labels and official literature relating to the goods and issued at the relevant time. It is the responsibility of the buyer to read all such relevant literature and to be familiar with all relevant recommendations, instructions precautions and limitations of use.

15. CONTRACTS

The seller shall have the option (without prejudice to any of its other rights against the buyer) by notice in writing to the buyer to rescind any contract between the seller and the buyer or to suspend delivery in any of the following circumstances:-

- (i) Should the buyer, in the opinion of the seller, be unable to pay for the goods.
- (ii) Should any sum owing by the buyer to the seller be overdue between the buyer and the seller
- (iii) Should the buyer be in breach of any other term of any other contract by the buyer with the seller
- (iv) Should the buyer enter into any composition or arrangement with or for the benefit of his creditors have a receiving order in bankruptcy made against him or (if a corporate body) should have a receiver or administrator appointed of the whole or any part of its assets or go into liquidation either voluntary or compulsory or under supervision except for the purposes of re-organisation or reconstruction of a solvent company.

16. DEMURRAGE

In the case of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering goods howsoever caused (including delays resulting from the non-provision of essential documentation) the seller or the buyer, whoever is responsible, shall be liable for the additional haulage costs that result from that delay.

17. STATUTORY CHARGES

The price of goods is subject to alteration by reason of the imposition of or alteration by the European community or by the united kingdom government in the rates and/or manner of collection of any tax, duty, levy or other statutory charge upon goods of this description, whether at the time of or if the change is retrospective at any time after the date of this contract provided that the change is applicable to the date of delivery

18. SALMONELLA

- a) The seller must observe Defras Code of Practice for the control of salmonella in the production of final feed for livestock, or any amendment thereof.
- b) The goods shall be available for delivery/collection as required during the delivery period irrespective of salmonella sampling/monitoring/testing.
- c) In the event that Defra issues an order preventing the movement of the contractual goods prior to the expiry of the delivery period, the seller shall notify the buyer in writing by rapid communication within 2 business days of the order and the delivery shall then be delayed until the order is lifted, provided this does not exceed 30 consecutive days. If the order delays delivery in excess of 30 consecutive days then the buyer shall have the option of cancelling the delayed portion of the contract. Such option to be exercised by the buyer giving notice to be received by the seller not later than the first business day after the extended delivery period. If the buyer does not exercise this option, such delayed portion shall be automatically extended for a further period of 30 days. If the delivery be prevented for more than 30 consecutive days extension, the contract shall be cancelled. In the event that payment has been made for the delivery order/transfer order/warehouse warrant as required under the payment clause and the foods are then subject to the provision of the government order preventing the movement of the contractual goods during the delivery period, then any contract so cancelled. Any monies paid for the goods forming part of this order shall be returned to the buyer for the portion of the contract so cancelled. Any monies due to be repaid under this clause shall be made within 7 days of notification that the contract or any portion of the contract has been cancelled. The buyer shall have no claim against the seller for delay or non-fulfilment under this clause provided that the seller shall have supplied to the buyer, if required, satisfactory evidence justifying the delay. In case of resale's all notices shall be passed on without delay by the sellers to their respective buyers.

19. DEFAULT

In the event of default of fulfilment of contract by either party, the other party at his discretion shall, after giving written notice, have the right to sell or purchase, as the case may be, against the defaulter and the defaulter shall make good the loss, if any, on such purchase or sale on demand. If any party liable to pay be dissatisfied with the price of such sale or purchase or if the above right is not exercised and damaged cannot be mutually agreed, any damages payable by the party in default shall be settled by arbitration. In the event of default by either party entitling the other party to damages, such shall be based upon the actual or estimated value of the goods on the date of default, to be mutually agreed or settled by arbitration, but nothing contained in or implied under this contract shall entitle the buyer/seller to recover any damages in respect of loss of profit upon any sub-contracts made by themselves or others. In the event of default, damages if any shall be computed upon the mean contract quantity. The date of default shall be the first business day following the expiry of the contract period. When an extension of collection/delivery has been either claimed under the force majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

20. PATENTS AND TRADEMARKS

No representation or warranty or indemnity is given by the seller that the goods do not infringe any letters patent trademarks registered designs or other industrial rights.

21. PROPER LAW

All contracts are subject to English Law and the buyer submits to the exclusive jurisdiction of the English courts in relation to any claim or dispute arising therefrom.

22. OVERDUE ACCOUNTS

We reserve the right to charge interest on any account which is not paid under our terms and conditions.