

# *General Terms and Conditions of sale - AB Agri Limited trading as Sullivan's Poultry Group (the "Seller" or the "Company")*

In these terms and conditions:

**Birds** – means live broiler chickens grown to marketable weight to be acquired by the Buyer

**Buyer** – means the company, partnership or person placing an order for Goods. In these terms and conditions, a person includes a natural person, corporate or unincorporated body (whether or not a separate legal entity)

**Contract** - means an individual contract between the Seller and the Buyer for the sale and purchase of Goods on these terms and conditions

**Event of Force Majeure** – means (i) any circumstances beyond the control of the Seller (including, but not limited to, acts of God, governmental actions, strikes or other labour disputes (whether or not relating to the Seller's workforce), lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, adverse weather conditions, epidemic, notifiable animal disease, fire, reduction in or unavailability of power at manufacturing plant, breakdown, stoppage, slow working or reduced efficiency of plant or machinery, restraints or delays affecting carriers, shortage or unavailability of raw materials from normal sources of supply), unexpected cost increases (including in the cost of manufacture and processing or obtaining raw materials from alternative sources of supply) caused by unexpected events such as severe weather, or (ii) the amendment or coming into force of any legal provision adversely affecting the Seller in relation to the production, import, export or sale of any Goods or any ingredients or materials for production of any Goods

**Goods** – means the Birds (or any instalment or part) or any related advisory services the Seller agrees to sell or perform and the Buyer agrees to purchase under the Contract

**Liveweight Price** – means the price of the Birds as agreed between the parties

**Loss(es)** – means any loss, claim, liability, expenses or damages suffered or payable whether arising directly or indirectly

## **1 Orders**

**1.1** No order shall be binding on the Seller unless and until it has been accepted in writing, or performed by, the Seller. The Seller shall use its reasonable endeavours to meet the Buyer's requested delivery timings but reserves the right to vary delivery deadlines where operationally necessary. Subject to Condition 9, once the Seller has accepted an order, the Buyer may not cancel the order (including, without limitation a forward purchase order) except with the prior written agreement of the Seller and on terms that the Buyer must indemnify the Seller in full against all Losses to the extent such Losses cannot be reasonably mitigated by the Seller, (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses reasonably and properly incurred by the Seller as a result of the cancellation

**1.2** The Buyer acknowledges that the volumes and weight specification may vary depending upon bird performance and further agree that the Company shall not be liable for any orders that cannot be fulfilled fully or partially

## **2 Terms of payment**

**2.1** The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the despatch of the Goods whether or not the Buyer takes delivery of the Goods

**2.2** Unless otherwise agreed in advance in writing, the Buyer shall pay for the Goods in Pounds Sterling not later than twenty-one (21) days from the Friday of the week of supply, notwithstanding that property in the Goods has not passed to the Buyer. Time for payment shall be of the essence

**2.3** The granting, variation and removal of a credit facility on the Buyer's account will be at the Seller's sole discretion. The Buyer agrees not to exceed the credit limit and to pay all invoices in good time to ensure capacity on the account for subsequent orders within the credit limit

**2.4** If any of the events described in Condition 4.3 occurs (or if the Seller reasonably believes that any such event is about to occur and notifies the Buyer accordingly), or if the Buyer fails to make

any payment on the due date, then without prejudice to any other right or remedy available, the Seller shall be entitled to suspend any further deliveries to the Buyer (without prejudice to the Seller's right subsequently to terminate the Contract for the same cause should it so decide) until any default by the Buyer be remedied and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. The Seller may, in respect of any unpaid amounts, charge interest at a rate equal to the higher of the interest rate payable on court judgments or 4% above the base rate from time to time of Barclay's Bank plc accruing on a daily basis from the due date until payment is made

### **3 Delivery**

3.1 All times, dates or periods given for delivery of the Goods are estimates given in good faith but without any responsibility on the Seller's part

3.2 Where the Seller makes delivery of the Birds to the Buyer, the Seller endeavours to deliver Birds in accordance with the date and time notified by the Buyer to the Seller. But time shall not be of the essence and the Buyer may not claim for any costs relating to late delivery of the Birds

3.3 The Buyer shall provide at the delivery point and at its own expense, adequate equipment and labour for taking delivery of the Goods

3.4 Where the Buyer makes collection of the Birds, the Company will only be liable to a maximum of 0.4% of the entire load in respect of Birds that are DOA

3.5 Each party undertakes to transport the Birds in accordance with the Animal Transport Act 2006 & Animal Welfare Act 2006

3.6 The Buyer must inform the Seller as quickly as possible and in any case whilst the Birds are being processed, of any loss or damage to the Goods of which it becomes aware so that the Seller has the opportunity to, if it so wishes, to attend the relevant factory to assess the issue. In the case of non-delivery, the Buyer must inform the Seller of such non-delivery within 24 hours of the due date for delivery. If the Buyer does not inform the Seller in accordance with this Condition 3.6, the Seller shall not be liable (whether in contract or for negligence or otherwise howsoever arising) for: (i) loss of or damage to the Goods occurring prior to delivery; (ii) any claim that any Goods are defective or is otherwise not in accordance with the Contract; or (iii) non-delivery as the case may be

### **4 Passing of title and risk**

4.1 Risk of any loss or damage to the Goods shall pass to the Buyer (a) in the case of Goods to be collected at the Seller's premises, at the time of the Seller's notice to the Buyer that the Goods are available for collection; or (b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery to the Buyer's premises or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods

4.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these terms and conditions, ownership of the Goods shall only pass when the Seller has received in cash or cleared funds payment in full of the price of the Goods

4.3 The Buyer's right to possession of any Goods for which payment has not been made in full and cleared funds in pounds Sterling to the Seller shall terminate immediately if the Buyer becomes subject to a winding-up petition or any other insolvency order or arrangement which shall include a material deterioration in the Buyer's credit-worthiness and the appointment of a receiver and/or manager, administrator or administrative receiver of the Buyer's undertaking or any part thereof

### **5 Conditions, Warranties and Representations**

5.1 The Buyer undertakes that it shall weigh the Birds immediately upon arrival at the Buyer's factory and provide a weighbridge ticket and a PMI report from the Meat Hygiene Service within two working days of the arrival of the Birds at the Premises. The Buyer further undertakes that it will ensure that the weighbridge is regularly calibrated and supply the Company with a copy of the certificate confirming the calibration twice a year

5.2 The Buyer agrees that it is and will at all times remain properly and lawfully registered to process the Birds and shall comply with all applicable regulatory and statutory requirements in this regard

5.3 The Buyer agrees to comply with the Seller's Code of Conduct, a copy of which can be downloaded from: <http://www.abf.co.uk/documents/pdfs/policies/supplier-code-of-conduct.pdf>

### **6 Product Recall Procedure**

6.1 The Buyer shall supply to the Seller in writing the contact name and telephone details of a person or persons who will be available 24 hours a day, every day of the year

**6.2** Either party shall notify the other party immediately upon becoming aware of: (a) any defect in the Goods delivered; (a) any material error or omission in the instructions for the use of the Goods; (b) a risk of any incident that may damage the reputation of the Seller or any of its brands; or (b) any order from a competent court of regulatory authority that the Goods are to be withdrawn from sale

**6.3** The Seller may require the Buyer at the Buyer's own cost to: (a) recall, return, isolate or dispose any Goods or any finished products into which the Goods have been incorporated already sold by the Buyer to its customers (whether for a refund, credit or replacement which shall in each case be undertaken by the Buyer at the Seller 's option); and/or (b) issue any notification to the Buyer's customers about the manner of use, operation or safety of any Goods or finished products already sold by the Buyer

**6.4** The Buyer shall not carry out a product recall of any Goods without the Seller's prior written consent

**6.5** The Buyer shall not publicise in any way this Agreement, any product recall or any other related matter without the Seller's prior written consent except where required by law

**6.6** If there is a product recall the Buyer will use its best endeavours to cooperate with the Seller to ensure a prompt and effective product recall

**6.7** The Buyer will enforce local procedures covering product recall subject to any directions received from the Seller

**6.8** The Buyer must retain all batch records and product information pertaining to the recalled Goods and make them available to the Seller within 4 hours of the Seller's notification of the need to recall Goods and the Buyer shall advise the Seller of the location of all recalled Goods so that a reconciliation may be carried out

**6.9** The Buyer shall, on request from the Seller (a) cease delivering or otherwise selling or distributing the recalled Goods; and (b) withdraw, recall or destroy any quantity of the Goods as a result of the failure of the Goods to comply with the provisions of these terms and conditions, or for any other reason bearing on quality and/or safety of the Goods, and the Buyer shall comply with the Seller's products withdrawal procedures as they may be revised from time to time

**6.10** If the Buyer fails to immediately withdraw, recall or destroy the Goods in accordance with the Seller's request, then the Seller is authorised to take such action as it deems necessary to withdraw recall or destroy the Goods (at the Buyer's cost). Such action by the Seller shall not relieve the Buyer of any of its obligations hereunder

**6.11** Save to the extent that any withdrawal, recall or destruction of Goods is directly caused by the Seller's wilful act or omission or negligence, the Buyer shall indemnify the Seller against all Losses arising out of any withdrawal, recall or destruction of the Goods pursuant to this Condition 6

## **7 Termination**

**7.1** If the Buyer is in breach of the contract (including but not limited to non-payment of amounts owed), the Seller shall have the right to cancel (by written notice), delay or suspend any other orders that have been placed by the Buyer but not yet delivered, without any liability to the Buyer

**7.2** For the avoidance of doubt, the circumstances referred to in condition 7.1 include, but are not limited to, the Buyer failing to comply with or having in place all requisite regulatory controls

## **8 Limitation of liability**

**8.1** The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: (a) any breach of a Contract; including wilful breach; (b) any claim in connection with the Goods, their supply by the Seller , or their use or resale by the Buyer; or (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract

**8.2** Nothing in these terms and conditions excludes or limits the liability of the Seller: (a) for human death or personal injury caused by the Seller's negligence; or (b) for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or (c) for fraud or fraudulent misrepresentation

**8.3** Subject to Condition 8.2, the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid or payable under the Contract for the Goods which are the subject matter of any valid claim by the Buyer

**8.4 Subject to Condition 8.2, the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of anticipated savings or cost reductions, loss of business, depletion of goodwill (in each case whether direct or indirect) or for any indirect or consequential loss whatsoever and howsoever caused which arise out of or in connection with the Contract**

#### **9 Force Majeure**

**If by reason of an Event of Force Majeure the Seller is prevented from or hindered in or delayed in obtaining or delivering (by normal route or means of delivery) the Goods, or if by reason of such an event the Seller can only obtain or deliver (by normal routes or means of delivery) the Goods at an increased cost which is unacceptable to the Seller, the Seller shall: (a) not be liable to the Buyer or deemed to be in breach of the Contract by reason of any resulting delay in performing, or any failure to perform, any of the Seller 's obligations in relation to the Goods; and (b) be entitled (without liability to the Buyer) to cancel any order or to delay delivery or to reduce the amount of Goods delivered. Where any such Event of Force Majeure continues for a period of more than 14 days, the Seller shall be entitled to terminate the Contract on notice in writing to the Buyer**

#### **10 General**

**10.1 The Seller may assign the Contract or sub-contract the whole or any part thereof. The Buyer shall not attempt to assign, transfer, charge or otherwise deal with its rights or obligations under the Contract without the prior written consent of the Seller**

**10.2 The Contract and any dispute or claim arising out of or in connection with it, or its subject matter or formation, whether of a contractual or non-contractual nature, shall in all respects be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts, including (without limitation) in respect of any application for injunctive or ancillary relief**