

# **TERMS AND CONDITIONS**

## **POULTRY TRADE PARTNERS UK LTD**

Version 1 [1 September 2021]

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**The customer's attention is drawn in particular to the provisions of clause 8.**

## **1. Interpretation**

### **1.1 Definitions:**

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control, including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods submitted in accordance with clause 2.2.

**Order Confirmation:** an order confirmation in writing sent by the Supplier to the Customer, agreeing to fulfil an Order.

**Order Form:** an order form, sent by the Customer to the Supplier, requesting the supply of Goods and specifying the type and quantity of the Goods ordered and the desired delivery date of the Goods.

**Supplier:** Poultry Trade Partners UK Ltd (registered in England and Wales with company number 10992297).

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email and WhatsApp.

## 2. Basis of contract and Order process

- 2.1 These Conditions apply to the Contract and any subsequent contracts between the Supplier and the Customer (unless specifically agreed otherwise in writing) to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 When the Customer wishes to place an Order, it shall either send an Order Form to the Supplier or submit an Order orally.
- 2.3 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions, which the Supplier shall be free to accept or decline at its absolute discretion. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.4 The Order shall only be deemed to be accepted when the Supplier issues an Order Confirmation, at which point the Contract shall come into existence. The Order Confirmation shall be deemed to contain the details of the Order submitted by the Customer, unless

- (a) the Customer notifies the Supplier in writing of any discrepancy between the Order and the Order Confirmation; and
- (b) the notification by the Customer of such discrepancy has been received by the Supplier not less than 72 hours before the indicated time of delivery of the Goods in the Order Confirmation

(the Customer hereby acknowledges that poultry products are perishable and consequently subject to tight time schedules).

- 2.5 The Customer is entitled to cancel an Order (whether partly or wholly). Such cancellation shall only be effective, if the Customer notifies the Supplier in writing and such cancellation is received by the Supplier not less than 72 hours before the indicated time of delivery of the Goods in the Order Confirmation.
- 2.6 The Customer is entitled to request changes to an Order. Any changes to an Order by the Customer
- (a) shall be notified by the Customer in writing or orally; and
  - (b) must have been received by the Supplier not less than 72 hours before the indicated time of delivery of the Goods in the Order Confirmation;
  - (c) are subject to the Supplier's acceptance; and
  - (d) shall only be deemed to be accepted when the Supplier issues an amended Order Confirmation, at which point the changes shall become effective.
- 2.7 The Order Confirmation and any subsequent amendments to the Order are only valid when issued by an authorised representative of the Supplier. Any acceptance of the Order is conditional the positive outcome of a credit check on whether the Customer will be capable to adequately fulfil its obligations under the Contract (to be determined at discretion of the Supplier and its credit insurer).
- 2.8 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.9 Any samples, drawings or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures or published on the Supplier's website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.10 A quotation for the Goods given or any list with prices of the Goods provided or published by the Supplier shall not constitute an offer.

### 3. Goods

- 3.1 The Supplier shall use its reasonable endeavours to supply the Goods in accordance with the Customer's Orders.
- 3.2 All Goods will be supplied as near as possible to the customers specified weights, as these are poultry products variances do occur.
- 3.3 The Supplier reserves the right to amend the Order if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.4 The Customer shall not, without the prior written consent of the Supplier:
- (a) alter or make any addition to the labelling or packaging of the Products displaying the Supplier's trademarks;
  - (b) make any addition or modifications to any advertising and promotional materials supplied by the Supplier; or
  - (c) alter, deface or remove any reference to the Supplier's trademarks, any reference to the Supplier or any other name attached or affixed to the Goods or their packaging or labelling.

### 4. Delivery

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows the number of the Order, the name and address of sender, carrier(s) and consignee, the type, weight and quantity of the Goods (including the code number of the Goods, where applicable), the method of packaging, special storage and temperature instructions (if any), the relevant Incoterm, delivery date and location, and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Customer's expense, unless the parties agree otherwise.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order Confirmation or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

- 4.3 Delivery is completed when the Goods are made at the Customer's disposal for unloading at the Delivery Location and for loading on the Customer's carrier if delivery is at the Supplier's premises. The Customer shall at all times ensure loading and unloading in a safe and competent manner and that delivery can take place at the agreed time for delivery and Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery at the Delivery Location or to take delivery at the Supplier's premises (as the case may be) of the Goods at the agreed time for the delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at the agreed time of delivery; and
  - (b) the Supplier may at its own discretion
    - (i) store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
    - (ii) at any time instead of or after storage resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 4.7 If the Supplier delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. Quality

5.1 The Supplier warrants that on delivery and for a period of 12 hours from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respect with their description; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier
  - (i) in the event of any defect that is apparent on normal visual inspection within 8 hours after delivery; or
  - (ii) in the event of any latent defect within 8 hours of the latent defect having become apparent,that some or all of the Goods do not comply with the warranty set out in clause 5.1 (**Complaint**);
- (b) the Supplier is given a reasonable opportunity of examining such Goods or having such Goods examined by an expert or independent examination body; and
- (c) the Customer has noted any deficiency in the quantity and possible defects of the Goods that are apparent on normal visual inspection on the delivery note accompanying the delivery of the Goods,

the Supplier shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full. If the Complaint is declared well-founded by the expert or the independent examination body, the inspection costs will be paid by the Supplier. If the Complaint is declared unfounded the inspection costs will be paid by Customer.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use, process and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any instruction supplied by the Customer;
- (d) the Customer alters such Goods without the written consent of the Supplier;



- (e) the defect arises as a result of willful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

5.7 The Customer undertakes to inform its customers or any other relevant third parties on the proper treatment of the delivered Goods. The Customer indemnifies the Supplier for any third party claims arising from a breach of this clause 5.7 and for any costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any such claim made.

## **6. Title and risk**

6.1 The title to and the risk in the Goods shall pass to the Customer on completion of delivery.

## **7. Price and payment**

7.1 The price of the Goods shall be the price set out or confirmed in the Order Confirmation.

7.2 The Supplier may, by giving notice to the Customer before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any factor arising as a result of or in connection with the United Kingdom's decision to leave the European Union (Brexit) (the Goods are usually imported by the Supplier from outside the United Kingdom);
- (c) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (d) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The Supplier may invoice the Customer for the Goods on or at any time after the Order Confirmation.
- 7.5 At any time before or during the Contract the Customer will upon request of the Supplier provide for the Supplier acceptable security for the Customer's obligations, including an advance payment or other form of security for the payment for the Goods and any costs and charges of packaging, insurance and transport of the Goods.
- 7.6 The Customer shall pay each invoice submitted by the Supplier:
- (a) before or on the due date mentioned on the invoice or in the absence of such date within 28 calendar days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 7.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8. Limitation of liability**

- 8.1 The Supplier has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims not exceeding €250,000 (EUR) per claim per Order. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

More information on the Supplier's insurance cover can be obtained by email ([customerservice@poultrypartners.nl](mailto:customerservice@poultrypartners.nl)).

- 8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) defective products under the Consumer Protection Act 1987.
- 8.4 Subject to clause 8.3, the Supplier's total liability to the Customer shall not exceed the lower of
- (a) the total of sums paid or payable for the Goods actually supplied under the Contract; or
  - (b) the amount of £50,000.00 (GBP).
- 8.5 Subject to clause 8.3, in respect of aspects of liability for which the Supplier has obtained insurance cover the Supplier's total liability to the Customer shall not exceed the amount paid out under the relevant insurance cover by the insurer plus the insurance deductible borne by the Supplier.
- 8.6 Subject to clause 8.3, the following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 8.7 Nothing in this clause 8 shall limit the Customer's payment obligations under this agreement.
- 8.8 This clause 8 shall survive termination of the Contract.

## 9. Termination

9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within a reasonable term of that party being notified in writing to do so;
- (b) the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company, limited liability partnership or partnership);
- (g) an application is made to court, or an order is made, for the appointment of an administrator or a notice of intention to appoint an administrator is given or an administrator is appointed over the Customer;
- (h) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;

- (j) the Customer (being an individual) is the subject of a bankruptcy petition, application or order;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (l) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (m) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
- (n) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation.

- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(c) to 9.1 (n), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **10. Force majeure**

10.1 The Supplier shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

10.2 In the event of a Force Majeure Event the Supplier may

- (a) suspend the performance of its obligations under this Contract until this event has ended, or
- (b) terminate this Contract with immediate effect by giving written notice to the Customer,

without being in breach of this Contract, or being liable for delay in performing, or failure to perform any of its obligations under this Contract.

10.3 The Customer shall pay for the Goods where the Supplier has partially fulfilled its obligations under this Contract.

10.4 If the period of delay or non-performance as set out in clause 10.1 continues for 4 weeks, the Customer may terminate this Contract by giving reasonable written notice to the Supplier. In that event the Customer shall reimburse the Supplier any costs and expenses incurred by the Supplier for the supply and delivery of the Goods, including the costs and expenses for preparation, care and storage of the Goods.

## **11. General**

### **11.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **11.2 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 11.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.6 **Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent to the Supplier by email to email address [customerservice@poultrypartners.nl](mailto:customerservice@poultrypartners.nl) and sent to the Customer by email to the email address specified on the intake form for the general acceptance as the Customer as a customer of the Supplier.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.6. (b)(iii), business hours means 9.00am to 5.00pm

Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.7 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.