

**WELLARD ANIMAL PRODUCTION PTY LTD CHILLED AND FROZEN MEAT  
EXPORT TERMS AND CONDITIONS  
Version 1.1 January 2014**

1. **Definitions:** In these Terms the following definitions shall apply:  
"Agreement" has the meaning set out in clause 2 of these Terms.  
"Buyer" means the buyer named in the Confirmation of Sale.  
"Claim" means any loss, damage, claim, expense or demand of any kind or character, whether in contract, at common law, in equity or pursuant to any statute or law.  
"Confirmation of Sale" means the document containing the particulars of the Agreement including details of the Buyer, the Goods and the Price which is signed by both Parties.  
"Destination Country" means the country to which the Goods are to be delivered nominated in the Confirmation of Sale.  
"Goods" means the frozen or chilled meat described in the Confirmation of Sale.  
"Party" means the Buyer or the Seller and "Parties" means both.  
"Price" means the price for the Goods nominated in the Confirmation of Sale  
"Terms" means the most recent version of these terms and conditions as amended by the Seller from time to time.  
"Seller" means Wellard Animal Production Pty Ltd (ACN 118 342 859)
2. **Legal Agreement:** The most recent version of these Terms together with the Confirmation of Sale make up the legal agreement between Buyer and the Seller for the sale of Goods (the **Agreement**). The Agreement shall not include any terms and conditions of Buyer e.g. Buyer's purchase order even if received by Seller after this Agreement is delivered to the Buyer. By accepting Goods from the Seller the Buyer agrees to be bound by these Terms.
3. **Amendment:** The Terms may be amended by the Seller from time to time by the Seller giving notice of the amendment to the Buyer. Notice is deemed given (whether or not actually received) when the Seller publishes the amended terms on its website at [www.wellard.com.au](http://www.wellard.com.au) ("Website"). The amended Terms shall apply to all future supplies of Goods from the Seller to the Buyer from the date on which they are published on the Website. It is the responsibility of the Buyer to ensure it has obtained a copy of the most recent Terms from the Website.
4. **Agreement to Sell:** The Seller agrees to sell to Buyer and the Buyer agrees to purchase the Goods for the Price in accordance with these Terms.
5. **Varying quantity of Goods:** Unless otherwise stated in the Confirmation of Sale the Seller reserves the right to deliver 10% more or less than the quantity of Goods stated in the Confirmation of Sale.
6. **Delivery Terms:**
  - (a) The Buyer must take delivery of the Goods at the place of delivery on the delivery date nominated in the Confirmation of Sale. If the Buyer does not do so then in addition to any other rights or remedies available to the Seller the Buyer must indemnify the Seller against all loss suffered as a result of the Buyer's failure to take delivery.
  - (b) The Seller reserves the right to change the delivery dates and times and will notify the Buyer of any changes as soon as is reasonably practical. The Seller shall not be liable for loss incurred by the Buyer for a change to the delivery dates or delivery times.
  - (c) The Seller reserves the right to change any vessel, shipping line, flight or any airline and shall not be liable to the Buyer for any loss incurred by the Buyer as a result.
7. **Insurance, Transport etc Costs:** The cost of insurance, freight, portage, loading, unloading, quarantine, customs clearance, excises and duties and delivery with respect to the Goods and associated issues, shall be borne and paid according to the Incoterms 2010 as nominated in the Confirmation of Sale.
8. **Conditions of Sale** This Agreement is conditional upon the Seller being granted and maintaining an export permit and any other documents or certificates required by law in order for the Seller to fulfil its obligations under this Agreement ("**Export Permit**")
9. **Responsibilities and Warranties of Buyer:** Buyer:
  - (a) must obtain all approvals, licenses and permits which are the responsibility of the Buyer required for the lawful shipping and provision of the Goods to the Destination Country; and must provide copies of such approvals, licences etc. at the request of the Seller prior to the departure date.
  - (b) is responsible for conforming with all laws applying in the Destination Country relating to the importation of the Goods.
  - (c) warrants that the Goods comply with all legal requirements of the Destination Country.
  - (d) must cooperate with and provide all reasonably requested assistance and information to, the Seller in order for the Seller to comply with any terms of its Export Permit and/or with any directions, orders, rules or instructions of a relevant governing body or authority relating to this Agreement or to the Seller's Export Permit.
  - (d) warrants that all the information provided to the Seller in relation to this Agreement is true, and accurate
10. **Prices:** Buyer must pay to the Seller the Price for the Goods including any taxes and/or levies imposed in respect of the supply of the Goods as stated in the Confirmation of Sale. Buyer must also pay all additional costs or expenses due to any factor beyond the Seller's control (including an increase in transport, labour or material costs and any change in delivery dates, quantities or specifications for Goods requested by Buyer).
11. **Payment Terms:**
  - (a) Buyer must pay the Price for the Goods in accordance with the terms of the Confirmation of Sale
  - (b) all invoices issued by the Seller must be paid in full by Buyer within the time period stated on the invoice and must be paid in full notwithstanding any counterclaim or set-off Buyer may claim against the Seller
  - (c) invoices that are not paid in full and on time will attract interest at the rate of 15% per annum, calculated daily.
12. **Withholding of Goods**

Without limiting any other rights of the Seller under this Agreement if the Buyer fails to pay for Goods when payment is due the Seller may (at its discretion):

  - (a) withhold any further supply of Goods until all outstanding payments have been received; and
  - (b) sell any undelivered Goods to a third party
13. **Risk and title to Goods:** All legal and equitable title to Goods remains with the Seller until payment is received in full from Buyer. Buyer must take all actions necessary to protect and maintain the Seller's title to the Goods, including storing Goods separate from other goods, always identifying Goods as property of the Seller and insuring the Goods. Until title in Goods passes to Buyer, the Seller or its agent shall be entitled at any time to require Buyer to deliver up the Goods to the Seller and the Seller has the right to enter upon any premises where Goods are located to repossess the Goods (without being liable for any damage caused by so doing). Buyer must not sell, encumber, pledge or in any way charge by way of security any of the Goods. Risk in the Goods shall pass to the Buyer upon delivery .

14. **Force Majeure:** If the Seller is hindered, restricted or prevented from performing any of its obligations under this Agreement due to an act of God, industrial action, embargo, decrees or orders or other Government Intervention including (without limitation) the refusal of any relevant government agency to grant or permit an Export Permit or any other approval required by the Seller to sell or export the Goods to Destination Country or any other cause whatsoever outside the reasonable control of the Seller, then the Seller may give written notice of any such cause to Buyer and the time for performance of the Seller's obligations shall be extended by the period the cause continues. If the Goods have not been delivered within 30 days after the agreed delivery date either party may terminate the Agreement and if this occurs the Seller shall have no liability whatsoever to the Buyer.
15. **Warranties:** To the maximum extent permitted by law the Goods are provided without any warranties of any kind, express or implied, including warranties of non-infringement, quality, merchantability or fitness for any purpose; and
16. **Liability and Indemnity:**
- (a) Except to the extent caused by the gross negligence or fraudulent act or omission or material breach of this Agreement by the Seller, the Seller shall have no liability to Buyer or third parties for any Claim whatsoever:
- (i) in relation, directly or indirectly, to the Goods or provision or non-provision of the Goods;
- (ii) for circumstances beyond the Seller's control; or
- (iii) in relation to acts or omissions of Buyer or any third party, and Buyer shall indemnify and hold the Seller harmless from such liability.
- (b) In all circumstances, damages recoverable by Buyer in connection with this Agreement shall not include damages for special, punitive or consequential loss, including but not limited to loss of profits.
- (c) Buyer must pay to the Seller all expenses, and charges incurred by the Seller due to breach of this Agreement by Buyer, including the Seller's debt collection and legal expenses in recovering or attempting to recover monies owed to the Seller.
17. **Time limit on claims and action:** Buyer agrees that:
- (a) The Seller must be notified in writing of any claim in relation to this Agreement within 3 days of delivery of Goods.
- (b) unless notice is given pursuant to (a) above, Goods are deemed to have been delivered in accordance with this Agreement and Buyer shall have no claim whatsoever against the Seller relating to this Agreement.
18. **Dispute Resolution:** Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved in the following order:
- (a) by negotiation between the representatives nominated by each Party in writing;
- (b) by mediation in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules; and
- (c) if the dispute has not been settled within 60 days following the written invitation to mediate or within such other period as agreed by the Parties in writing, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. Mediations and arbitrations shall be administered by ACICA in Perth, Australia in English.
19. **Termination:** The Seller may, in its sole discretion, immediately terminate this Agreement (without any further liability) if any of the following apply:
- (a) the Buyer defaults in the performance of this Agreement in any respect and the Seller has issued a notice of default requiring the Buyer to rectify the default within the period specified in the default notice and the default remains unrectified within the period specified in the default notice
- (b) the Buyer becomes insolvent, has a receiver, manager, administrator, liquidator or other controller appointed over it or its assets or it makes composition with its creditors.
- (c) The Australian Government or any other relevant authority makes an order preventing the Seller from complying with its obligations including (without limitation) cancellation or suspension of the Seller's Export Permit.
- (d) the Buyer breaches a warranty or other material provision of the Agreement.
20. **Miscellaneous:**
- (a) Reference in these Terms to the singular includes the plural, and reference to any party includes the party's successors, administrators, personal representatives and assigns.
- (b) A notice to be served shall be deemed to have been duly served if it is in writing and is sent to the address in the Confirmation of Sale for each Party by certified mail, facsimile, personal delivery or email provided there is proof of delivery of the email.
- (c) The Agreement is governed by the law in force in Western Australia and Buyer submits to Courts of that jurisdiction.
- (d) Buyer may not assign any obligation under the Agreement without the written consent of the Seller.
- (e) If any provision or part provision of the Agreement is invalid, unenforceable or illegal then it shall be deemed deleted from this Agreement and the remaining provisions and part provisions continue to apply with full force and effect.
- (f) Any omission by the Seller to enforce a right under the Agreement shall not operate as a waiver by the Seller and will not prejudice the rights of the Seller to enforce any of its rights under the Agreement.
- (g) All rights and remedies expressly reserved to the Seller herein are without prejudice to any other right or remedy available to the Seller.
- (h) The Buyer agrees that it will not disclose to any person any confidential information of or relating to the Seller which has been disclosed to it or which has come into its possession as a result of its dealings with the Seller including the terms of the Agreement or the negotiations preceding the Agreement.
- (i) These Terms shall apply to all future agreements between the Seller and the Buyer regarding the sale of Goods unless expressly excluded.
- (k) The authentic text of the Agreement is the English language version. Any translation of the Agreement prepared by or on behalf of either Party for any purpose does not control the interpretation or construction of the Agreement.