

**WELLARD ANIMAL PRODUCTION PTY LTD CHILLED AND FROZEN MEAT
PURCHASE 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 Wellard Animal Production Pty Ltd (ACN 118 342 859)
 - "**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 Purchase**" means the document containing the particulars of the Agreement including details of the Seller, the Goods and the Price which is signed by both Parties.
 - "**Destination Country**" means the country to which the Goods are to be exported nominated in the Confirmation of Purchase.
 - "**Export Contract**" means the contract under which the Buyer agrees to export the Goods to a third party overseas.
 - "**Goods**" means the frozen or chilled meat described in the Confirmation of Sale.
 - "**GST**" has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.
 - "**Party**" means the Buyer or the Seller and "**Parties**" means both.
 - "**Price**" means the price for the Goods nominated in the Confirmation of Sale
 - "**Seller**" means the seller named in the Confirmation of Purchase
 - "**Terms**" means the most recent version of these terms and conditions as amended by Buyer from time to time.
2. **Legal Agreement:** The most recent version of these Terms together with the Confirmation of Purchase make up the legal agreement between Buyer and Seller for the sale of Goods (the **Agreement**). The Agreement shall not include any terms and conditions of Seller including any terms contained in the Seller's invoice even if received by Buyer after this Agreement is delivered to the Buyer. By supplying Goods to the Buyer the Seller agrees to be bound by these Terms.
3. **Amendment:** The Terms may be amended by the Buyer from time to time by the Buyer giving notice of the amendment to the Seller. Notice is deemed given (whether or not actually received) when Buyer publishes the amended Terms on its website at www.wellard.com.au ("Website"). The amended Terms shall apply to all future supplies of Goods from Seller to the Buyer from the date on which they are published on the Website. It is the responsibility of the Seller to ensure it has obtained a copy of the most recent Terms from the Website.
4. **Goods to be Supplied by Seller:** Seller agrees to sell to Buyer the Goods listed in the Confirmation of Purchase at the Price in accordance with the terms of the Agreement.
5. **Delivery:** The Seller must deliver the Goods to the place and at the times advised by the Buyer. If delivery is delayed then:
 - (i) Buyer shall be entitled at its sole discretion to cancel or renegotiate the Agreement; and
 - (ii) Seller shall also promptly pay on demand from Buyer all costs, expenses, losses or damages incurred or suffered by Buyer as a result of (whether directly or indirectly) such late delivery or cancellation or variation of the Agreement, including all loss of profit.
6. **Insurance, Transport etc Costs:** The cost of insurance, freight, portage, loading, unloading, quarantine, customs clearance and delivery with respect to the Goods and associated issues, excises and duties shall be borne and paid according to the Incoterms 2010 as nominated in the Confirmation of Purchase.
7. **Conditions of Purchase**
 - (a) The Seller acknowledges and agrees that where the Buyer advises the Seller that the Goods are intended for export this Agreement is conditional upon the Buyer being granted and maintaining an export permit and any other documents or certificates required by law in order for the Buyer to export the Goods to the Destination Country ("**Export Permit**").
8. **Seller Cooperation:**
 - (a) Where the Goods are intended for export the Seller must cooperate with and provide all reasonably requested assistance and information to the Buyer (or a regulatory body as directed by the Buyer) in order for the Buyer 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 the Export Permit including (without limitation) providing access to the premises where the Goods originate to the Buyer and/or a representative of a relevant regulatory body for the purposes of inspection and verification that the premises and Goods comply with all relevant laws.
 - (b) The Seller must provide to the Buyer all certificates and other documents required to be provided by law or as reasonably requested by the Buyer relating to the Goods.
9. **Prices:** Price for the Goods are set out in the Confirmation of Purchase which are, unless expressly stated otherwise, inclusive of GST and represent the total amount payable by the Buyer to the Seller.
10. **Tax Invoices and Payment:** The Seller must issue a written tax invoice to the Buyer that comply with formats as specified by Buyer. The Buyer is entitled to set off from any such invoice any counterclaim or set-off the Buyer may claim against the Seller. Buyer will pay the invoice in accordance with payment terms in the Confirmation of Purchase.
11. **title to Goods:** Title to the Goods shall pass to the Buyer upon delivery.
12. **Force Majeure:** If the Buyer is hindered, restricted or prevented from performing any of its obligations under this Agreement due to act of God, civil unrest, adverse weather, decrees or orders or other Government Intervention or any other cause whatsoever outside the reasonable control of Buyer, including (without limitation) the refusal of any relevant government agency to grant or permit an Export Permit or any other approval required by the Buyer to sell or export the Goods to their intended location then the Buyer may give written notice of any such cause to the Seller and the time for performance of the Buyer's obligations shall be extended by the period the cause continues. If the Buyer is prevented from complying with its obligations under the Agreement for a period of 30 days then, without limiting any other rights of termination, it may upon written notice to the Seller terminate the Agreement.
13. **Warranties:** Seller warrants that:
 - (a) the Goods comply with all relevant laws;
 - (b) that the Goods meet all specifications nominated in the Confirmation of Purchase;
 - (c) where the Goods are intended for export the Goods comply with all requirements of the Destination Country;
 - (d) all the information provided to the Buyer in relation to the Goods or to this Agreement is true and accurate;
 - (e) it has all the necessary approvals, licenses and permits which are required for the lawful sale of the Goods to the Buyer and will, at the request of the Buyer, provide copies of such licences and permits

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14. Liability and Indemnity:

- (a) to the extent permitted at law and except to the extent caused by the negligence, reckless, wilful or fraudulent act or omission or material breach of this Agreement by the Buyer, the Buyer shall have no liability to Seller for any Claim, for circumstances beyond the Buyer's control or in relation to acts or omissions of the Seller or any third party.
- (b) in all circumstances, damages recoverable by Seller in connection with this Agreement shall not include damages for special, punitive or consequential loss, including but not limited to loss of profits.
- (c) Seller indemnifies the Buyer against all loss incurred by the Buyer due to a breach of this Agreement by Seller.

15. Dispute Resolution: Any dispute, controversy or claim arising out of or relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved in the following order:

- (a) The disputing Party must serve a written notice outlining the dispute on the other Party;
- (b) a representative nominated in writing of each Party must meet with a view to resolving the dispute on a good faith basis;
- (b) If the Parties cannot resolve the dispute then it may be referred by either Party for mediation in accordance with the Australian Commercial Dispute Centre (ACDC) Mediation Rules; and
- (c) if the dispute has not been settled within 60 days following mediation or within such other period as agreed by the Parties in writing, either Party may issue legal proceedings;
- (d) all costs of mediation shall be borne equally by the Parties.

16. Termination: Buyer may immediately terminate this Agreement (without prejudice to any right to claim damages) if the following apply:

- (a) the Seller breaches a material obligation under the Agreement
- (b) the Seller party defaults in performance of any other contract between the parties and the default remains unrectified 14 days after service of a notice to rectify the default; or
- (c) the Seller becomes insolvent, has a receiver, manager, administrator, liquidator or other controller appointed over it or its assets or it makes composition with its creditors.
- (d) The Buyer's Export Permit is revoked, cancelled or suspended for any reason whatsoever.
- (e) The Seller breaches a warranty provided by it in this Agreement.
- (f) The Export Contract (if any) is terminated for any reason.

17. Miscellaneous:

- (a) Reference in this Agreement to the singular includes the plural, and reference to any party includes the party's successors, administrators, personal representatives and assigns.
- (b) Subject to clause 3, a notice to be served under this Agreement shall be deemed to have been duly served if it is in writing and is sent to the address in the Confirmation of Purchase for each Party by certified mail, facsimile, personal delivery or email provided there is proof of delivery of the email.
- (c) The Seller may not assign its obligations under this Agreement without the written consent of the Buyer
- (d) If any provision or part provision of the Agreement is invalid, unenforceable or illegal then it shall be deemed deleted from the Agreement and the remaining provisions and part provisions continue to apply with full force and effect.

- (e) The terms of this Agreement may only be waived or varied by writing signed by the Parties.
- (f) Any omission by Buyer to enforce any of the provisions of this Agreement shall not operate as a waiver by Buyer to enforce any of the provisions of this Agreement.
- (g) All rights and remedies expressly reserved to Buyer herein are without prejudice to any other right or remedy available to Buyer.
- (h) The Parties agree that they will not disclose to any person any confidential information of or relating to the other party which has been disclosed to it or which has come into its possession as a result of this Agreement including the terms of this Agreement or the negotiations preceding this Agreement.
- (i) These Terms shall apply to all future agreements between the Seller and the Buyer regarding the sale of Goods unless expressly excluded.
- (l) The Agreement constitutes the entire agreement between the Buyer and Seller regarding its subject matter.
- (m) This Agreement is governed by the law in force in Western Australia and the Parties submit to Courts of that jurisdiction.