

**WELLARD ANIMAL PRODUCTION PTY LTD**  
**CHILLED AND FROZEN MEAT SALE 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.
  - “**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
  - “**PPSA**” means the *Personal Property Securities Act 2009* (Cth) including any amended, replacement or successor provisions.
  - “**Seller**” means Wellard Animal Production Pty Ltd (ACN 118 342 859)
  - “**Terms**” means the most recent version of these terms and conditions as amended by Seller from time to time.
2. **Legal Agreement:** The most recent version of these Terms together with the Confirmation of Sale 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 Buyer including the Buyer’s purchase order (if any) 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 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 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.
3. **Agreement to Buy:** The Seller agrees to sell and the Buyer agrees to buy the Goods for the Price set out in the Confirmation of Sale in accordance with the terms of the Agreement.
4. **Varying quantity of Goods:** Seller may vary to the quantity of Goods stated in the Confirmation of Sale by 10% more or less and the Price will be adjusted accordingly.
5. **Delivery Terms:**
  - (a) The Buyer must take delivery of the Goods at the place of delivery on the delivery dates nominated in the Confirmation of Sale or as otherwise agreed by the Parties. If the Buyer does not do so then in addition to any other rights or remedies available to the Seller the Buyer shall 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) delivery shall be as per the Confirmation of Sale unless otherwise agreed in writing by the Parties.
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 nominated in the Confirmation of Sale.
7. **Responsibilities and Warranties of Buyer:** Without limiting any other obligations of the Buyer under this Agreement the Buyer:
  - (a) accepts full responsibility for the accuracy of all purchase orders placed by Buyer;
  - (b) agrees that all purchase orders placed by Buyer are on a “firm sale” basis. Goods are not sold on a “sale or return” or “exchange and return” basis;
  - (c) must cooperate with and provide all reasonably requested information to the Seller in order for the Seller to comply with its obligations under the Agreement.
  - (d) warrants that all the information provided to the Seller in relation to this Agreement is true, and accurate
8. **Conditions of Sale** This Agreement is conditional upon the Seller having and maintaining all relevant licences and approvals required by law in order to comply with its obligations under the Agreement.
9. **Prices for Goods:** Buyer must pay to Seller the Price for the Goods including any taxes and/or levies imposed in respect of the supply of the Good. Buyer must also pay all additional costs or expenses due to any factor beyond 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).
10. **Tax Invoices and Payment:** Payment of the Price must be made in accordance with the payment terms set out in the Confirmation of Sale.
11. **Withholding of Goods**

Without limiting any other rights of the Seller under this Agreement if the Buyer fails to pay for Goods delivered when payment is due the Seller may withhold any further supply of Goods until all outstanding payments have been received.
12. **Risk and Title to Goods:** All legal and equitable title to Goods remains with the Seller until payment in full is received from the Buyer. The Buyer must take all actions necessary to protect and maintain the Seller’s title to the Goods, including storing Goods separately from other goods, always identifying Goods as the property of the Seller and insuring the Goods. Until title in the Goods passes to the Buyer, the Seller or its agent shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and the Seller has the right to enter upon any premises where the Goods are located to repossess the Goods (without being liable for any damage caused by so doing). The Seller 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.
13. **PPS Law**
  - (a) This clause applies to the extent that this Agreement provides for a „security interest” for the purposes of the PPSA
  - (b) Terms used in this clause 13 shall have the same meaning as given under the PPSA unless otherwise defined.
  - (c) The Seller may register its security interest in all and any Goods under this Agreement.
  - (d) The Buyer must do anything (such as obtaining consents and signing documents) which the Seller requires for the purposes of ensuring that the Seller’s security interest in the Goods charged and if applicable a Purchase Money Security (PMSI) has first

**WELLARD ANIMAL PRODUCTION PTY LTD  
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Version 1.1 January 2014

2

- priority over any other priority, is enforceable, perfected and otherwise effective under the PPSA
- (f) The Seller may recover from the Buyer the cost of doing anything under this clause, including but not limited to registration fees.
- (g) The rights of the Seller under this Agreement are in addition to and not in substitution for the Seller's rights under other law (including PPSA) and the Seller may choose whether to exercise rights under this Agreement, and/or under other law, as it sees fit.
- (h) To the extent that Chapter 4 of the PPSA applies to the security interest under this Agreement, the Seller and the Buyer agree that the following provisions of the PPSA do not apply: sections 95, 96, 121(4), 125, 130, 129(2) and 129(3);132(3)(d), 132 (4), 135, 142 and 143
- (j) The Buyer waives its rights to receive a verification statement
- (k) The Seller and the Buyer agree not to disclose information of the kind that can be requested under section 275 (1) of the PPSA. The Buyer must do everything necessary on its part to ensure that section 275 (6) (a) of the PPSA continues to apply. The Agreement in this sub-clause is made solely for the purposes of allowing the Seller the benefit of section 275 (6) (a) and the Seller shall not be liable to pay damages or any other compensation or be subject to injunction if the Seller breaches this sub-clause.
14. **Force Majeure:** If the Seller is hindered, restricted or prevented from performing any of its obligations under this Agreement due to act of God, industrial action, embargo, decrees or orders or other Government Intervention or any other cause whatsoever outside the reasonable control of the Seller, then the Seller may give written notice of any such cause to the 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 by 30 days after the original delivery date the Seller may terminate the Agreement and if this occurs the Seller shall have no liability whatsoever to the Buyer.
15. **Warranties:** Unless expressly provided and 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.
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 the 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 Seller's control; or
- (iii) in relation to acts or omissions of the Buyer or any third party, and the 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) The Buyer must pay to the Seller all expenses, and charges incurred by the Seller due to breach of this Agreement by the Buyer, including the Seller's debt collection and legal expenses in recovering or attempting to recover monies owed to the Seller.
- (d) To the maximum extent permitted by law the Seller limits its liability, at its discretion to:
- (i) the replacement of the Goods or the supply of equivalent goods; or
- (ii) the payment of the cost of replacing the Goods or acquiring equivalent goods
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 three (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.
18. **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 the mediation shall be borne equally by the Parties..
19. **Termination:**
- (a) The Seller may, in its sole discretion, immediately terminate this Agreement (without any further liability) if any of the following apply:
- (i) The Buyer breaches a warranty provided in this Agreement;
- (ii) The Buyer fails to pay monies due to the Seller for a period of 7 days after they are due
- (iii) The Buyer defaults in the performance of any other obligation under 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
- (iv) 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.
- (b) Upon termination of the Agreement the Buyer must immediately pay all outstanding monies due and owing the Seller.
20. **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 Sale for each party by certified mail, facsimile, personal delivery or email provided there is proof of delivery of the email.
- (c) Neither party may assign any obligation under this Agreement without the written consent of the other.
- (d) If any provision or part provision of this 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.
- (e) The terms of this Agreement may only be waived or varied by writing signed by any executive officer of both parties.
- (f) Any omission by the Seller to enforce a provision of this Agreement shall not operate as a waiver by the

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

3

- Seller and will not prejudice the rights of the Seller to enforce any of the provisions of this 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 this Agreement including the terms of this Agreement or the negotiations preceding this Agreement.
  - (i) These Term shall apply to all future agreements between the Seller and the Buyer regarding the sale of Goods unless expressly excluded.
  - (j) The Agreement constitutes the entire agreement between the Buyer and Seller regarding its subject matter.
  - (k) This Agreement is governed by the law in force in Western Australia and Buyer submits to Courts of that jurisdiction