

## General Terms and Conditions of Sale of Thompsons of York

### 1. Interpretation

1.1 In these Conditions, the following definitions apply:

1.1.1 **“Applicable Laws”** any and all:

- a. legislation (including statutes, statutory instruments, regulations, edicts, bye-laws, orders, directives or treaties) and common law;
- b. judgements, resolutions, decisions, orders, notices and demands of any court, regulator or tribunal; and
- c. rules, policies, guidance or recommendations issued by any governmental, statutory or regulatory body applicable at the time.

1.1.2 **“Business Day(s)”** a day which is not a Saturday or Sunday or a bank holiday in England.

1.1.3 **“Buyer”** the company, organisation or person whose Order for Goods and/or Services is accepted by the Seller.

1.1.4 **“Conditions”** these terms and conditions as amended from time to time in accordance with clause 13.1.

1.1.5 **“Confidential Information”** all information, in any form (including, without limitation, in written, verbal, visual or electronic form wherever located), relating to the business, clients, customers, products, affairs and finances (which includes the pricing and other financial information) of the Seller for the time being confidential to the Seller and trade secrets including, without limitation, the specification of the Goods, technical data and know-how relating to the business of the Seller or any of its suppliers, clients, customers, agents, distributors, shareholders or management.

1.1.6 **“Consignment”** has the meaning given to it in clause 4.11.

1.1.7 **“Contract”** means the contract between the Buyer and the Seller for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

1.1.8 **“Contract Period”** is a defined period agreed in writing between the Buyer and the Seller whereby the Buyer agrees to place Orders.

1.1.9 **“Data Protection Legislation”** means: (i) the General Data Protection Regulation ((EU) 2016/679) (“**GDPR**”) unless and until the GDPR is no longer directly applicable in the UK, together with any national implementing laws, regulations and secondary legislation as amended or updated from time to time in the UK including the Data Protection Act 2018 (“**DPA**”) and the retained EU law version of GDPR that is amended by UK legislation on or after 31 December 2020 (the “**UK GDPR**”); (ii) any successor legislation to the GDPR the DPA and the UK GDPR; and (iii) any other directly applicable regulation relating to data protection and privacy.

1.1.10 **“Fair to Average Quality”** finished feed products that are produced to a merchantable quality.

1.1.11 **“Force Majeure Event”** any event beyond a party’s reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, extremes of weather, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, national disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

1.1.12 **“Goods”** the products manufactured or supplied by the Seller, including any reports or information provided as part of a consultancy service (if applicable), that the Seller agrees to sell, and the Buyer agrees to purchase under the Contract, as set out in the Order.

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- 1.1.13 “**Insolvency Event**” in respect of a party: (a) that party has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; (b) that party makes or proposes to make an arrangement or composition with its creditors; or (c) anything which, under the law of any jurisdiction, is analogous to any of the acts or events specified in this definition.
- 1.1.14 “**Intellectual Property Rights**” any current and future intellectual property rights and interests including patents, utility models, designs, design rights, copyright (including rights in software), decryption rights, database rights, trade marks, rights pursuant to passing off, service marks, business and trade names, domain names, know-how, topography rights, inventions, rights in confidential information (including technical and commercial trade secrets) and image rights, and rights of a similar or corresponding character in any part of the world, in each case whether registered or not and including any application for registration and renewals or extensions of such rights in any country in the world.
- 1.1.15 “**Material Defects**” physical or biological contaminants to feed or the composition of the feed is known be incorrect.
- 1.1.16 “**Order**” the Buyer's order for the supply of Goods and/or Services.
- 1.1.17 “**Registered Qualified Person**” means a person entitled to prescribe and/or supply certain veterinary medicines under the Veterinary Medicines Regulations 2013.
- 1.1.18 “**Seed**” means seeds that shall comply at the time of delivery with the UK Seeds Regulations and the minimum standards of applicable EU Seeds Regulations in force at the time of supply unless otherwise stated by us.
- 1.1.19 “**Seller**” William Thompson (York) Limited (company number 00211711) whose registered office is at Main Street, Amotherby, Malton, YO17 6TA.
- 1.1.20 “**Services**” the services the Seller agrees to sell, and the Buyer agrees to purchase under the Contract, as set out in the Order.
- 1.2 In these Conditions (except where the context otherwise requires):
- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 any words following the terms “**including**”, “**include**”, “**for example**” or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions; and
- 1.2.3 references to any legislation include any modification or re-enactment of that legislation and any subordinate legislation made (before or after the Contract) under that legislation.
- 2. Basis of Sale**
- 2.1 These Conditions shall apply to the Contract to the exclusion of all other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 These Conditions along with such industry standard terms as the parties may agree in writing shall apply, are the only terms and conditions upon which the Seller is prepared to deal with the Buyer and they shall govern and are incorporated into the Contract (provided that in the event of contradiction between the Conditions and such agreed industry standard terms, the former shall prevail).
- 2.3 The Order can be provided verbally or in writing by the Buyer to the Seller (unless the Buyer is purchasing Goods online, in which case please refer to clause 3 below). The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions.
- 2.4 The Buyer shall be responsible for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer. The Buyer must also provide any necessary information relating to Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 2.5 Once the Buyer has submitted its Order:

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- 2.5.1 the Seller may obtain and use information regarding the Buyer from credit reference agencies to help make purchase limit decisions about the Buyer's account. The Buyer shall agree to co-operate by providing access to information that the Seller might reasonably request to assist in the purchase limit assessment process. The Seller is not responsible for the accuracy of information provided by credit reference agencies or for the consequences of any decisions based upon it; and
- 2.5.2 if requested by the Seller, the Buyer shall provide financial guarantees in support of any purchase limit facility granted.
- 2.6 The Order shall only be deemed to be accepted when the Seller confirms its acceptance of the Order in writing or, if earlier, when the Seller commences production of the Goods, or provision of any Services. It is only at this point that the Contract shall come into existence.
- 2.7 Any samples, illustrations, descriptive matter, information or advertising produced by the Seller are for the purpose of giving an approximate idea of Goods and/or Services described. They shall not form part of the Contract or have any contractual force.
- 2.8 If an Order :
- 2.8.1 comprises Goods which contains feedstuffs, if the Order has been accepted by the Seller, the Order may not be cancelled by the Buyer except with the agreement in writing of the Seller. Unless such agreement in writing is provided the Buyer shall remain fully liable for the costs outlined in the Order;
- 2.8.2 requires the Seller to buy raw materials in advance to fulfil the Order, and the Seller has agreed in writing to buy raw materials in advance specifically to fulfil the Order, the Buyer shall purchase the quantity of the Goods that include such forward purchased raw materials in the quantities and at the times agreed by the Seller in writing;
- 2.8.3 is placed on the basis of mutually agreed forecasts within a Contract Period, then any adjustments to the Order that the Buyer requires during the Contract Period must be agreed in writing with the Seller. If the adjustment is not agreed between the parties, the Buyer will remain liable for the costs for the Order made, or that has been agreed to be made in accordance with the mutually agreed forecasts;
- 2.8.4 comprises Goods that contain feedstuff or cereals, such Goods shall be sold in accordance with the latest edition UKAS/AIC Contract Notes for these materials;
- 2.8.5 comprises a specification for the Goods:
- 2.8.5.1 these shall be set out in the Seller's statutory declaration, a copy of which is provided to the Buyer on delivery;
- 2.8.5.2 the Seller reserves the right to make any changes to the specification of Goods which are required by any Applicable Laws or to conform to any applicable statutory or European Community requirements or which do not materially affect their quality or performance.
- 2.8.6 comprises Seed, those Goods are sold as being suitable for the production of consumer crops and not for the reproduction of Seed and the Seller can accept no responsibility for any Seed crops produced. Information concerning the Seeds and their performance given verbally or in writing by the Seller is given in good faith but is not to be taken as a representation by the Seller as to performance and suitability of Seeds sold. Performance may depend on local climatic and other conditions. Sales are made by the Seller on the basis that the Buyer has satisfied itself on the suitability of the Seeds for its requirements.
- 2.9 All Goods sold by the Seller will be sold in accordance with all Applicable Laws, including the Medicines Act 1968. Orders for Goods containing medicines, including feed must be received and accepted at one of the Seller's premises which is registered for the sale and supply of such Goods with the applicable governing bodies.
- 2.10 No Contract can be created between the parties unless an Order is received and accepted by the Seller at one of the Seller's premises which is registered for the sale and supply of such Goods with the applicable governing bodies.
- 2.11 Some Goods can only be sold to you by a Registered Qualified Person.

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2.12 Some Goods are restricted for sale to professional users (i.e. those with specific certificates or licenses required by law) only. Appropriate identification will be required at the point of sale.

2.13 If the Order includes Goods that are made according to the Buyer's specification or measurements, the Buyer must ensure the Order is correct and accurate as the Buyer's right to return will not be available, unless the Goods are delivered damaged or faulty.

### 3. Online Orders

3.1 If the Buyer is purchasing Goods via the Seller's website, it should follow the onscreen prompts to place an Order.

3.2 The Seller's online order process allows the Buyer to check and amend any errors before submitting the Order to the Seller.

3.3 After the Buyer places an Order, it will receive an email from the Seller acknowledging that the Seller has received it. This does not mean that the Order has been accepted, acceptance of the Order will take place as described in clause 3.4 below.

3.4 Acceptance of the Order will take place when the Seller sends the email to the Buyer to accept it, at which point the Contract will come into existence.

### 4. Delivery

4.1 Delivery of the Goods shall be completed when the Goods have arrived at the delivery location specified in the Order, unless the Goods are collected from the Seller in which case delivery of the Goods shall be completed on collection.

4.2 All deliveries arranged by the Seller will be sent via approved and safe methods of transport suitable for the Goods purchased.

4.3 The Seller reserves the right to reject unsuitable methods of transportation for Goods collected by the Buyer including unapproved, dirty or contaminated vehicles or incorrect receptacles for the storage of Goods during transportation.

4.4 The Buyer shall provide at the delivery point and at their own expense, adequate equipment and labour for taking delivery of the Goods.

4.5 The Seller will not be bound to deliver Goods or perform Services if the Buyer's delivery premises or access ways are, in the Seller's opinion, unsafe or unsuitable for delivery vehicles, employees or agents.

4.6 Where Goods are collected by the Buyer, the Buyer is responsible for complying with any environmental and health and safety regulations in force at the collection site. In particular the Buyer shall not allow any smoking or naked lights in the vicinity of Goods.

4.7 All delivery dates given by the Seller are estimates and the Seller shall use its reasonable endeavours to meet the delivery requests of the Buyer, but the Seller reserves the right to vary delivery (load size and deadlines) when operationally necessary. Any adjustments will be notified by the Seller verbally or in writing.

4.8 The Seller shall not in any circumstances be liable for failure to deliver by such dates. The Seller shall not be responsible for any loss or damage arising directly or indirectly out of delay or as a result of non-delivery. The Buyer shall not be entitled to refuse Goods in such circumstances.

4.9 If the Seller fails to deliver Goods (or any instalment thereof) or fails to perform a Service for any reason other than any cause beyond the Seller's reasonable control, the Buyer's fault or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, the Seller's liability shall be limited to the excess of (if any) the cost to the Buyer (in the cheapest available market) of similar Goods and/or Services to replace those not delivered over the price of Goods and/or Services.

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- 4.10 The practical logistics and nature of feedstuff may mean that the Seller cannot deliver exact quantities and in this instance the Buyer should not be entitled to reject the Goods if the Seller delivers up to and including 5% or 15 tonnes, whichever is the lesser quantity, more or less than the total amount ordered.
- 4.11 Where Goods are to be delivered in instalments each delivery (each instalment being a “**Consignment**”) shall constitute a separate Contract and failure by the Seller to deliver any one or more of the Consignments in accordance with these Conditions or any claim by the Buyer in respect of any one or more Consignments shall not entitle the Buyer to treat the Contract as a whole invalidated.
- 4.12 If the Buyer fails to take delivery of Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery, then (without prejudice to any other right or remedy available to the Seller) the Seller may:
- 4.12.1 store the Goods until they can be delivered and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 4.12.2 sell Goods at the best price readily obtainable and charge the Buyer for any shortfall below the price that was agreed upon placement of the Order between the Buyer and the Seller (after deducting all reasonable storage fees and selling expenses).
- 4.13 The Buyer shall inspect perishable Goods immediately upon receipt from the Seller and shall notify the Seller in writing of any shortages, damages or faults to the Goods delivered, within 24 hours after delivery. In the absence of any such notification, the Goods shall be deemed to have been delivered in the correct quantity without damages or faults and the Buyer shall be deemed to have accepted the Goods and shall have no claim whatsoever against the Seller in respect to shortages or damage.

### 5. **Damage in Transit**

- 5.1 Where the Goods are to be delivered to the Buyer, the Seller will make right any Goods proved to the Seller’s satisfaction to have been damaged in transit and are no longer suitable for their primary use provided that the Buyer notifies the Seller within 24 hours after delivery in writing with photographic evidence that clearly captures the nature and extent of the damage.
- 5.2 Before replacing the Goods, the Seller reserves the right to:
- 5.2.1 inspect the Goods to ensure that the Seller is satisfied that the Goods have been damaged during transit; and
  - 5.2.2 request that the damaged Goods are returned to the Seller at the Buyer’s expense.
- 5.3 Under no circumstances is the Seller liable for the damage of Goods if the transportation was arranged by the Buyer.

### 6. **Quality Assurance**

- 6.1 The Goods shall be manufactured, stored and delivered and the Services shall be performed in accordance with all Applicable Laws.
- 6.2 The Seller warrants that on delivery Goods shall:
- 6.2.1 be Fair to Average Quality (feedstuff only);
  - 6.2.2 conform in all material respects with their description; and
  - 6.2.3 be free from Material Defects.
- 6.3 The Seller warrants that the Services will be provided using reasonable skill and care.
- 6.4 Subject to clause 6.5, the Buyer shall be entitled to reject the Goods if they do not conform to clause 6.2 provided that the Buyer notifies the Seller in writing and provides the Seller with a reasonable length of time to inspect and/or sample the Goods and/or Services which the Buyer wishes to reject.

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- 6.5 In the absence of such notification after 5 Business Days of receipt of the Goods and/or Services, the Buyer shall be deemed to have accepted the Goods and/or Services.
- 6.6 The Seller shall not be liable for the Goods failure to comply with the warranty set out at clause 6.2 in any of the following events:
- 6.6.1 the Buyer makes further use of such Goods after giving notice in accordance with clause 6.4 without written consent of the Seller;
  - 6.6.2 the defect arises because the Buyer failed to follow the Seller's instructions for storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the storage, use and maintenance of the Goods;
  - 6.6.3 the Buyer alters or adds other Goods without written consent of the Seller;
  - 6.6.4 the defect arises as a result of wear and tear, wilful damage, negligence, or abnormal, poor or unsuitable storage or working conditions;
  - 6.6.5 the Goods differ from their normal description because of changes made to ensure they comply with Applicable Laws.
- 6.7 If the Buyer wishes to reject Goods for any reason other than breach of warranty in clause 6.2, it shall notify the Seller in writing. The Seller may agree to (but is not obliged to) remove the Goods, in which case it shall be entitled to charge the Buyer the costs it has incurred in respect of such removal.
- 6.8 The Buyer is responsible for all delivery costs incurred for returned Goods which are not deemed faulty in accordance with these Conditions.
- 6.9 All warranties in respect of the Goods supplied by the Seller:
- 6.9.1 shall be specific to the condition of the Goods at the time of delivery and to the composition of the Goods being as stated, within reasonable tolerances. No other responsibility will be accepted by the Seller for any use or storage of the Goods by the Buyer or any claim for loss or damage arising therefrom unless it can be established beyond a reasonable doubt that the Seller is at fault.
  - 6.9.2 will conform to the Warranty offered by the manufacturer of the Goods and will be subject to fair and proper use and maintenance of the Goods by the Buyer. It is important that the Buyer advises the Seller promptly if the Goods are faulty or if there is any query regarding their effective use or storage.
- 6.10 Where Goods are returned due to being allegedly faulty or defective after a reasonable period of use, the Seller will return the Goods to the manufacturer for investigation. This could result in the Goods being either repaired or replaced, as may be appropriate if the claim is accepted, subject to the manufacturer's guarantee. If a claim of fault in the Goods is not deemed to be justified by the manufacturer, the Seller will either arrange for the Goods to be returned to the Buyer or arrange for the Goods to be repaired, if possible, with the consent and at the cost of the Buyer.
- 6.11 If the Order comprises of a number of consignments, the Seller will be obliged to make right the fault for a specific Consignment proved to be faulty.
- 6.12 If any of the Goods are recalled in accordance with any Applicable Laws, they will be replaced at the Seller's earliest convenience. Under no circumstances shall the Seller be liable for the any consequential losses as a result adhering to any Applicable Laws.
- 6.13 All Goods that comprise feedstuff is manufactured to a defined specification using skilled workmanship. Given the nature of the product, physical variations can be common and therefore the Buyer will not reject any product based on colour variations and/or crumbliness.
- 6.14 To the extent that the Goods are to be manufactured:
- 6.14.1 in accordance with a specification supplied by the Buyer or third-party nutritionist working on behalf of the Buyer; and/or

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6.14.2 using materials supplied by the Buyer; and/or

6.14.3 using suppliers nominated by the Buyer,

the Seller will have no liability in relation to any defects of the Goods which may be caused by materials used or defects in the Specification.

6.15 The Buyer shall take all necessary protective precautions in accordance with COSHH regulations for any hazardous product, including but not limited to treated Seeds, cleaning chemicals, disinfectants, fertilisers, pesticides, veterinary medicines, feed additives and feed straights.

6.16 All Seeds recommended for Sale by the Seller is based on information given by the Buyer. The suitability of any Seed or Variety of Seed for cultivation in any area shall be at the Buyer's risk entirely as shall also be the fortuitous incidence of climatic and ground conditions for the successful growth of the crop and freedom from disease or pests.

6.17 These Conditions shall apply to any Goods supplied by the Seller.

6.18 Any Services carried out by the Seller will be carried out with reasonable skill and care and in accordance with all Applicable Laws.

6.19 In relation to the delivery of Services, the Buyer is entitled to log complaints within 3 months after the Services have been completed. The Seller will investigate within 5 Business Days of receiving a complaint from the Buyer, or 10 Business Days for more complex complaints. Should corrective action be required, it will be completed with 28 Business Days from the end of the investigation period.

### **7. Price**

7.1 A quotation given to the Buyer by the Seller does not constitute an offer.

7.2 The Seller reserves the right at any point in time to retract or amend quotations or price lists should it feel necessary for reasons which is due to any factor beyond its control including (without limitation) any foreign exchange rate fluctuation, currency regulation, alteration of duties, increases in costs of manufacture/haulage, changes to the availability or increases to the cost of raw materials, fluctuations in commodity prices, any change to delivery dates or quantities, alterations to the specification of the Goods which is requested by the Buyer or any other delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

7.3 The price of the Goods shall be:

7.3.1 the Seller's final quoted price or, if no price has been quoted, the price listed in the Seller's published price list current at the date of delivery; and

7.3.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, unless otherwise agreed in writing by the Seller.

7.4 Unless otherwise stated, the price is exclusive of any applicable taxes or duties which the Buyer shall be additionally liable to pay to the Seller.

7.5 The Seller reserves the right to change the price of the Goods at any time before delivery to reflect the imposition of, or change in, any tax, duty or other levy imposed in relation to the Goods by any government or regulatory authority.

### **8. Payment**

8.1 The Seller may invoice the Buyer for Goods any time before, on or after completion of Services or delivery/collection of the Goods (as applicable). If you are purchasing Goods via the Seller's website, payment for the Goods and all applicable delivery charges is in advance. The Seller will not charge the Buyer's debit card or credit card until the Goods are dispatched.

8.2 The Seller reserves the right to request payment for any items that must be purchased specially for specific Orders before the Seller commences manufacture. Where the Seller is obliged to order a minimum quantity that is more

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- than the amount required for the Order, the Seller reserves the right to invoice the Buyer for the total amount ordered.
- 8.3 All Goods and/or Services will be invoiced in British Pounds Sterling and payment is to be made into the bank account nominated by the Seller in writing from time to time. Payment shall be made within the timescales provided by the Seller in writing. Without prejudice, the Seller reserves the right to request only specific approved methods of payment.
- 8.4 A credit charge (which is a percentage of the net value of Goods and/or Services) may be added to an invoice (except in the case of cash sales) and provided no previous invoice is overdue the Buyer shall be entitled to deduct the same provided payment of the invoice is made by the due date.
- 8.5 The Buyer shall pay the invoice in full less any credit charge which the Buyer is entitled to deduct as aforesaid but without any other deduction no later than the date specified on the invoice and the Seller shall be entitled to recover the price notwithstanding that delivery may not have taken place and property in Goods has not passed to the Buyer (if applicable).
- 8.6 The granting of a purchase credit limit facility on the Buyer's account will be subject to status, credit checks and references before an account purchase credit limit can be applied. Without prejudice to these Conditions, the Seller reserves the right not to accept Orders that exceed the purchase credit limit, and the Buyer must pay all invoices within the agreed timescale to ensure capacity on the account for subsequent Orders within the purchase credit limit.
- 8.7 The Seller may vary the purchase credit limit or remove the purchase credit limit facility at its discretion.
- 8.8 The Buyer shall make all payments due under the Contract in full to the Seller as notified to the Buyer and without any deduction whether by way of set-off, counterclaim, discount, or abatement.
- 8.9 The Seller shall have the right to set-off any amounts due from the Buyer at any time under or in connection with any Contract, against any amounts that the Seller owes to the Buyer at any time whether under or in connection with a Contract or otherwise.
- 8.10 If the Buyer fails to make any payment in accordance with the Contract by the payment date then the Seller reserves the right to:
- 8.10.1 terminate the Contract or suspend any further deliveries to the Buyer;
  - 8.10.2 charge the Buyer interest on the overdue amount as the rate set in the Late Payment of Commercial Debts (Interest) Act 1998 as amended. Interest will accrue each day from the due date until the date of actual payment of the overdue account, whether before or after judgement. The Buyer shall pay the interest together with the overdue account; and
  - 8.10.3 commence legal proceedings for the recovery of the debt including all charges associated with the debt and the recovery of the debt.
- 9. Termination**
- 9.1 The Seller shall have the authority to terminate the Contract by giving the Buyer not less than one month's notice.
- 9.2 Each party shall be entitled to terminate the Contract immediately upon giving notice to the other if:
- 9.2.1 the other party commits a material breach which is not capable of remedy or, if it is capable of remedy, the breaching party fails to remedy the material breach within 20 Business Days after receipt of notice giving full particulars of the breach and requiring it to be remedied; or
  - 9.2.2 the other party is unable to pay its debts or ceases to trade and/or an Insolvency Event applies to the other party.
- 9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at the termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.



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9.4 On termination, the Buyer shall immediately pay all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Seller may submit an invoice, which shall be payable immediately on receipt.

9.5 Without affecting any other right or remedy available to it, the Seller may suspend and terminate the supply of Services or all further deliveries of Goods under the Contract or any other Contract between the Buyer and the Seller if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to an Insolvency Event, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

### 10. Title and Risk

10.1 Risk in the Goods shall pass to the Buyer on completion of delivery or, when Goods are to be collected by the Buyer at the Seller's premises, at the time of the Seller's notice to the Buyer that the Goods are available for collection.

10.2 Title in the Goods shall not pass to the Buyer until the Seller has received payment in full of the price of the Goods.

10.3 Until title to the Goods have passed to the Buyer in line with the contractual rights, the Buyer shall:

10.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

10.3.2 store the Goods separately from all other Goods held by the Buyer so that they remain readily identifiable as the Seller's property;

10.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

10.3.5 notify the Seller immediately if it becomes subject to an Insolvency Event clause; and

10.3.6 give the Seller such information relating to the Goods as the Seller may require from time to time.

10.4 Subject to clause 10.5, the Buyer may resell the Goods in the ordinary course of its business at full market value before title has passed to the Buyer. Any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale. In these circumstances the proceeds of any such resales are received and held by the Buyer as identifiable funds on trust for the Seller.

10.5 If before title to the Goods passes to the Buyer, the Buyer becomes subject to an Insolvency Event, then without limiting any other right or remedy the Seller may have:

10.5.1 the Buyer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

10.5.2 the Seller may at any time:

10.5.2.1 require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

10.5.2.2 if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

### 11. Liability

11.1 Nothing in these Conditions shall limit or exclude the Seller's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; or (c) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

11.2 The Seller shall not be liable for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill or similar losses; (d) loss of anticipated savings; (e) loss of use; (f) loss or corruption of any data or information; or (g) any form of indirect, special or consequential loss whatsoever of howsoever caused.

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- 11.3 The Seller shall not be liable if the total price for the Goods (and/or the Services) has not been paid and the due date for payment has passed.
- 11.4 Subject to clauses 11.1, 11.2, 11.3 and 11.5 and 11.6, the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with the performance or contemplated performance of the Contract shall in all circumstances be limited in respect of any claims relating to any loss or damage resulting to the Buyer from defective Goods shall in no circumstances exceed the purchase price of the Consignment (or defective part of it) provided the Seller has the option to replace Goods or make up for shortages in such Consignments.
- 11.5 All feedstuff recommended for sale by the Seller is based on the information given by the Buyer and is based on the average animal. Under no circumstances shall the Seller be liable for the loss of production as performance is linked to genetic, animal health status, management (including supplementation of trace elements) or environmental factors.
- 11.6 Goods that have been manufactured by a third-party can be purchased by the Buyer and the Buyer is responsible for complying with all manufacturer's recommendations regarding the use of the Goods and, if in doubt, the Buyer must contact the manufacturer.

## 12. Force Majeure Event

- 12.1 If during a Force Majeure Event the Seller is prevented or delayed in manufacturing, obtaining or delivering (by normal route or means of delivery) the Goods, or products required for the production of the Goods, or if by reason of such an event that the Seller can only manufacture, obtain or deliver the Goods at an increased cost which is unacceptable to the Seller, the Seller shall 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. The Seller will also be entitled to cancel any Order or to delay delivery or reduce the amount of Goods delivered without liability to the Buyer. Where any such Event of Force Majeure continues for a period of more than 14 Business Days, the Seller shall be entitled to terminate the Contract on notice in writing to the Buyer.
- 12.2 If a Force Majeure Event directly impacts production of the Goods at the Seller's manufacturing site the Seller will use best endeavours to source alternative production capacity to fulfil Orders using forward bought raw materials as outlined in clause 2.8. If this has been unsuccessful after 14 Business Days in accordance to clause 12.1 the Seller shall be entitled to terminate the Contract with the Buyer and the Buyer will not be entitled to the ownership of forward bought raw materials and the Seller reserves the right to release the forward bought raw materials to the open market.
- 12.3 For the purposes of clause 12 the Buyer must acknowledge that specific sourced raw materials are not sustainable. Where such categories of Goods are affected by a Force Majeure Event, the Seller shall: (a) investigate alternative sources of supply of such Goods, but (without prejudice to Condition 2.8) shall be entitled to pass on to the Buyer any additional costs incurred by the Seller in obtaining the specific Goods from such alternative sources; and (b) not be entitled to avail itself of the remedy except to the extent that it is unable to locate an appropriate alternative source of supply. Where the Seller identifies an alternative source of supply of such specific Goods, the Seller shall notify the Buyer of the additional costs associated with the supply of such Goods before committing to acquiring them. The Buyer shall have the right to refuse to pay such additional costs by notice in writing to the Seller, within 5 Business Days of receipt of notice from the Seller of additional costs, in which case the Buyer shall be deemed to have cancelled its Order for such specific Goods, without liability to either party.

## 13. Variation and Waiver

- 13.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.
- 13.2 No failure to exercise or delay in exercising any right or remedy provided under the Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.
- 13.3 No single or partial exercise of any right or remedy under the Contract shall prevent or restrict the further exercise of that or any other right or remedy.

14. **Notices.** Any notices must be in writing and may be delivered by hand, first class post or special delivery, addressed to the recipient as its registered office or to any other address notified in writing to the sender by the other party.

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A notice shall be deemed to have been received: if delivered by hand, when left at the address referred to above; if sent by first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by special delivery, on the date and at the time that the delivery receipt is signed.

15. **Entire Agreement.** The Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. Each party acknowledges that it has not been induced to enter into the Contract by a statement or promise which it does not contain. All warranties, conditions and other terms (whether express or implied) which are not set out in the Contract are (to the fullest extent permitted by law) excluded from the Contract. Nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation.
16. **Further Assurance.** At any time, each party shall sign all documents and do or cause to be done all further acts and things as that party so requiring may reasonably require to give full effect to the terms of the Contract.
17. **Rights of Third Parties.** No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.
18. **Language.** These Conditions and the Contract are made only in the English language.
19. **Assignment.** The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.
20. **Confidentiality.** The Buyer shall keep confidential any Confidential Information that it may acquire from the Seller and shall not use the Confidential Information for any purpose other than to perform its obligations under the Contract and will ensure that its officers and employees comply with the provisions of this clause 20.
21. **Data Protection**
  - 21.1 Each party shall comply with the applicable requirements of the Data Protection Legislation. This clause 21 is in addition to and does not replace a party's obligations under the Data Protection Legislation. The terms "Data Controller", "Data Processor", "Data Subject" "Personal Data", "Process" and "Processing" have the meanings set out in the Data Protection Legislation.
  - 21.2 The parties acknowledge that they each collect Personal Data in their capacity as a Data Controller. If at any time either party Processes Personal Data of the other party as a Data Processor under the Contract, the parties shall enter into a separate data processing agreement or confirm separately in writing the subject matter and duration of the Processing, the nature and purpose of the Processing, the types of Personal Data, the categories of Data Subject and the obligations and rights of the Data Processor if the parties agree (acting reasonably and in good faith) that such agreement or written confirmation is necessary.
22. **Intellectual Property Rights**
  - 22.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Buyer) shall be owned by the Seller.
  - 22.2 The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Buyer to the Seller for the term of the Contract for the purpose of providing the Services to the Buyer.
  - 22.3 No right of licence is granted to the Buyer in respect of the Intellectual Property Rights of the Seller.
23. **Severance.** If any court of competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected and the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
24. **Governing Law and Jurisdiction.** The Contract shall be governed by English law, and the parties irrevocably submit to exclusive jurisdiction or the courts of England.