

HJ Lea Oakes & AIC Finished Feedingsuffs Contract Terms

1. Ownership and risk.

- a. Ownership shall pass when the goods are paid for by the Buyer.
- b. Risk shall pass to the Buyer on either collection or delivery of the goods

2. Payment.

- a. The price agreed under this contract is based on the (nutritional) specification agreed at the time of entering the contract. The Seller reserves the right to amend this price on the basis of any subsequent amendment to this specification agreed by the parties.
- b. In the event of a change in the credit rating or worthiness of the Buyer, the Seller reserves the right to withdraw or amend any credit facilities offered at his sole discretion.

3. Tolerance. Both buyer and seller responsible for ordering and delivering each month with a tolerance of 5% or 15 tonnes (whichever is the lesser quantity) more or less than the agreed monthly tonnage detailed in clause 5. Unless otherwise agreed between the parties, any quantity collected/delivered in excess of the upper tolerance shall be settled by mutual agreement or otherwise by arbitration. If the Seller delivers less than the minimum quantity permitted by the tolerance he shall be deemed to be in default and shall compensate the other party in accordance with the Default clause herein and calculation of damages shall be against the mean contract quantity. Where the buyer cannot take delivery of the agreed contracted tonnage, the Seller has the option of rolling over the tonnage either within or following completion of the contract period or placing the Buyer in default, the Buyer then to compensate the Seller in accordance with the Default clause herein and calculation of damages shall be against the mean contract quantity.

4. Claims.

a. Claims based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be advised as soon as possible and confirmed by rapid written communication within two business days of either delivery or from when risk passes in accordance with clause 9 (b). Methods of rapid written communication for the purposes of this clause shall be defined as either fax, e-mail, or other electronic means, or by letter sent by first class post no later than the subsequent business day. In the event of this contract being one of a series of contracts, all claims shall be passed on without delay after receipt and if so passed on shall be deemed to be proper claims from Buyer to Seller as required by the provision of this clause whether within the two business days period or not.

b. All claims other than those in (a) above must be notified so as to be received by the Seller within 90 consecutive days from the last day of the period of delivery with the same proviso as to series of contracts as in (a) above.

5. Liability. Whenever a product is ordered by the Buyer under a brand name and is delivered to them by the Seller in the manufacturer's original packaging then under no circumstances whatsoever does the Seller accept any greater liability for any injury damage and/or loss that the product may cause to the Buyer than is accepted by the manufacturers of the said product themselves. Without prejudice to the generality of the above disclaimer of liability the Buyer should note that manufacturers of goods do not normally accept any liability for injury damage and/or loss arising from the use of goods manufactured by them if the use to which the goods are put is not one of those set out on their own label or in the technical instructions delivered with the said goods nor will they do so if the Buyer has failed to observe the instructions for use supplied with the goods.

Save for liability for death or personal injury caused by the negligence of the Seller and/or such servants or agents of the Seller for whom they are deemed in law to be responsible, or under the provisions of the Consumer Protection Act 1987 (or any successor thereto) and/or any liability for defective goods under any United Kingdom Statute or Regulations made thereunder which imposes specific conditions and/or warranties and provides that these cannot be excluded by the parties to the contract, the Seller shall not be under any liability to the Buyer nor to any third party claiming through them in respect of defects in goods delivered whether patent or latent, nor for any injury damage and/or loss resulting directly or indirectly from such defects howsoever caused and except as provided above no warranty or condition whether express or implied by law statute or custom of trade as to the quality or fitness for any particular purpose or merchantability of such goods is given. The Buyer holds himself out as entering into this contract in the course of business.

The Seller when supplying goods under a brand name (whether such goods are manufactured by the Seller or by a third party) warrant only that such goods will be merchantable under their original description and will be fit for any particular purpose for which they have at any time been held out to be fit under that brand name. It is neither a condition nor a warranty of this contract that goods sold under the said brand name will at all times consist of the same ingredients and/or the same proportion of ingredients. The Seller accepts no liability whatsoever for any injury damage and/or loss of whatever description and whether direct or consequential which such change may cause to the Buyer.

Without prejudice to the generality of the disclaimer of liability above the Seller at their sole discretion undertakes to replace allegedly defective goods or to refund to the Buyer up to the invoice price of such goods where the Seller is satisfied that they are responsible. Under no circumstances whatsoever shall the Seller's liability under this clause exceed the invoice price of any allegedly defective goods. Save as already elsewhere provided and for such replacement and/or refund the Seller shall not under any circumstances whatsoever be liable to the Buyer for any loss and/or damage whether direct or consequential.

6. Advice. Unless otherwise agreed between the parties, advice by the Seller to the Buyer shall not form part of the contract. The Seller accepts no responsibility for any advice given to the Buyer by their employees, servants or agents and accept no liability for any injury, loss and/or damage resulting directly and/or indirectly from any such advice. Without prejudice to the above if goods the subject of this contract are manufactured by a Third Party and are delivered with the manufacturer's recommendations for the use of the goods in question and the advice so given differs from other advice received by the Buyer from whatsoever source the Buyer must either follow the manufacturer's instructions or, if in any doubt, apply to the manufacturers for further advice. Failure to do so may lose for the Buyer any protection from warranties given by the manufacturers to all recipients of the said goods and the Seller accepts no liability whatsoever for any injury, damage and/or loss suffered by the Buyer who has failed to follow the manufacturer's recommendations.

7. Delivery. Delivery dates must be confirmed between the parties. In the case of monthly deliveries involving more than one load, the deliveries of each monthly tonnage must be spread evenly across the relevant month unless otherwise mutually agreed.

8. Consignment. Each delivery or consignment shall stand as a separate contract. When more than one consignment is made, each consignment is to be considered as a separate contract and will itself be subject to the same provisions as to tolerances but the margin on the mean contract quantity is not to be affected thereby.

9. Demurrage. In the case of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering the goods howsoever caused (including delays resulting from the non-provision of essential documentation) the Seller or the Buyer, whoever is responsible, shall be liable for the additional haulage costs that result from that delay.

10. Statutory Charges. The price of the goods is subject to alteration by reason of the imposition of or alteration by the European Community or by the United Kingdom Government in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon goods of this description, whether at the time of or if the change is retrospective at any time after the date of this contract provided that the change is applicable to the date of delivery.

11. Salmonella.

a. The Seller must observe Defra's Code of Practice for the control of salmonella in the production of final feed for livestock, or any amendment thereof.

b. The goods shall be available for delivery/collection as required during the delivery period irrespective of salmonella sampling/monitoring/testing.

c. In the event that Defra issues an Order preventing the movement of the contractual goods prior to the expiry of the delivery period, the Seller shall notify the Buyer in writing by rapid written communication within 2 business days of the Order and the delivery shall then be delayed until the Order is lifted, provided this does not exceed 30 consecutive days.

If the Order delays delivery in excess of 30 consecutive days then the Buyer shall have the option of cancelling the delayed portion of the contract. Such option to be exercised by the Buyer giving notice to be received by the Seller not later than the first business day after the extended delivery period. If the Buyer does not exercise this option, such delayed portion shall be automatically extended for a further period of 30 days.

If delivery be prevented for more than the further 30 consecutive days extension, the contract shall be cancelled.

In the event that payment has been made for the delivery order/transfer order/warehouse warrant as required under the Payment Terms clause and the foods are then subject to the provision of the Government Order preventing the movement of the contractual goods during the delivery period, then any monies paid for the goods forming part of this Order shall be returned to the Buyer for that portion of the contract so cancelled. Any monies due to be repaid under this clause shall be made within 7 days of notification that the contract or any portion of the contract has been cancelled.

The Buyer shall have no claim against the Seller for delay or non-fulfilment under this clause provided that the Seller shall have supplied to the Buyer, if required, satisfactory evidence justifying the delay.

In case of resales all notices shall be passed on without delay by the Sellers to their respective Buyers.

12. Non-Availability. The agreed contract price of the compound feed which is the subject of this contract depends upon the necessary ingredients continuing to be available to the Seller. Should "force majeure" be invoked against the Seller by any of his own suppliers and the ingredient in question not be replaceable at a similar price, the Seller will immediately inform the buyer and offer him either replacement of the ingredient in question from a different source but at a contract price adjustment to be agreed or reformulation of the compound feed maintaining the original price. If the ingredient is not replaceable at all and the Buyer will not accept reformulation, the Seller can himself invoke the Force Majeure clause in this contract as also if the parties are unable to agree a new price prior to manufacture of the compound feed to which this contract refers.

13 Force Majeure. Neither the Buyer nor the Seller shall be responsible for delay in delivery of goods or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within the United Kingdom), lock-out, combination of workmen, breakdown of machinery, power failure or fire, provided that the party invoking this clause despatches written notice to the other party within 5 business days of the occurrence, or not later than 5 business days after the beginning of the contract period, whichever is the later. In the case of resales such information shall be passed on without delay. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the contract period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.

14. Default. In the event of default of fulfilment of contract by either party, the other party at his discretion shall, after giving written notice, have the right to sell or purchase, as the case may be, against the defaulter and the defaulter shall make good the loss, if any, on such purchase or sale on demand. If any party liable to pay be dissatisfied with the price of such sale or purchase or if the above right is not exercised and damages cannot be mutually agreed, any damages payable by the party in default shall be settled by arbitration. In the event of default by either party entitling the other party to damages, such damages shall be based upon the actual or estimated value of the goods on the date of default, to be mutually agreed or settled by arbitration, but nothing contained in or implied under this contract shall entitle the Buyer/Seller to recover any damages in respect of loss of profit upon any sub-contracts made by themselves or others. In the event of default, damages if any shall be computed upon the mean contract quantity. The date of default shall be the first business day following the expiry of the contract period. When an extension of collection/delivery has been either claimed under the Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

15. Arbitration. Any dispute (other than a claim for an unpaid debt or as provided under (c) below) arising out of this contract shall be referred to arbitration as follows:

a. Unless otherwise agreed the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Confederation), and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.

b. Where a dispute as to quality arises regarding goods which are the subject of two or more contracts identical in terms except as to date and price, then any arbitration may, with the consent of all parties concerned, be held as between the first Seller and the last Buyer in the series of transactions as if they were the only contracting parties and any award then made shall, subject to the rights of appeal as provided in the relevant rules, be binding on all intermediate parties in the series of transactions and may be enforced by any such intermediate party against his intermediate contracting party as if a separate award had been made under each separate contract. All such intermediate contracts shall be made available to the Arbitrators.

c. If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve, or if a dispute of necessity involves a third party who is not subject to arbitration, either party before the time for commencing arbitration proceedings has lapsed may, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld or no answer received within twenty eight days the party making the request shall be at liberty to commence Court proceedings leaving it to the other party, if the other party so wishes, to apply for a stay of proceedings invoking the arbitration clause. The Court will then decide whether the arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.

16. Time Limits for Claiming Arbitration. Arbitration shall be claimed in relation to quantity, quality or condition within 28 days from the date of the arrival of the goods at their ultimate destination in the United Kingdom or from when risk passes in accordance with clause 9(b) and in relation to other claims within 90 consecutive days of the last day of the contract period. Where the contract giving rise to the arbitration is one of a series of contracts a reasonable extension of time to commence arbitration proceedings will be allowed to those in the 'string'. In the case of disagreement as to what constitutes 'a reasonable extension' this will be referred to the arbitrators as a preliminary issue. Subject to any special conditions relating to leave being granted to institute court proceedings contained in the arbitration rules of the Agricultural Industries Confederation Limited, the making of an award shall be a condition precedent to any right of action by either party for any person claiming under either of them, so that if arbitration proceedings regarding any claims are not instituted within the time limit prescribed all causes of action relating to that claim, whether by way of arbitration or in any Courts of Law, are deemed time barred and waived.

17. Non-Payment. The Seller reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this or any other Contract with him by the Buyer have been received and reserves alien upon - and the right to sell or otherwise dispose of - all goods the subject of this Contract whether appropriated to it or not in respect of any such payments.

18. Insolvency.

a. If either party to the contract

i. has a Receiver or Administrative Receiver appointed of any of its property or business undertaking; or

ii. announces that it has ceased or will or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing Contracts); or

iii. suspends payment of its debts or fails to pay, is unable to pay or admits or states its inability to pay, its debts as they fall due; or

iv. disposes or threatens to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party); or

v. convenes, calls or holds a meeting of its creditors or makes any arrangement, voluntary arrangement of composition with its creditors: or

b. If:

i. the directors of one party make or state an intention to make or give notice of a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986: or

ii. a petition is presented for winding-up or administration of one party: or

iii. a resolution (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice has been given to the other party who has approved it) is passed for the voluntary winding up of one party: or

iv. one party is dissolved: or

v. a statutory Demand in bankruptcy is served on one party: or

vi. an Interim Order under Part VIII of the Insolvency Act 1986 is applied for or made in respect of one party: or

vii. a Bankruptcy Petition is presented against one party: or

viii. a party suffers the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises: or

ix. a party being a partnership any of the above events occurs with respect to the partnership or to any partner therein: then

notwithstanding any previous arrangement with the other party for deferred payments the full or full remaining price for any goods delivered by the innocent party shall become immediately due to it; and

The innocent party shall have the right upon giving written notice to the other party without prejudice to any other rights and remedies available to it forthwith to cancel and/or suspend or to refuse to accept any further deliveries and/or to terminate the Contract at any time after becoming aware of the above circumstances.

c. Whenever any of these rights are exercised by the innocent party, the innocent party will not be liable to pay any compensation to the other party.

19. Business Days/Non-Business Days. A Business Day is the period between 0900 hours and 1600 hours inclusive on any day other than a Non-Business Day. Saturdays, Sundays and officially recognised national holidays applicable throughout the United Kingdom and any days which the Agricultural Industries Confederation may declare as non-business days for specific purposes shall be deemed non-business days for the purpose of passing of notices and claims.

20. Contracts (Rights of Third Parties) Act 1999. Pursuant to S.1(2)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the contract may be enforced by a third party.

21. Assignment. Neither buyer nor seller may assign or transfer this contract to any third party, whether in whole or in part, or any of its rights or obligations under this contract, without the prior written consent of the other party.

22. Domicile. This contract shall be deemed to have been made in England, and the construction, validity and performance thereof shall be governed in all aspects by English Law.