

13.08.2019

These Terms and Conditions will apply to any contract between us for the sale of Goods (as defined in clause 2.1) to you ("**Contract**"). Please note that by ordering any of our Products, you agree to be bound by these Terms and Conditions ("**Terms**") and the other documents expressly referred to in it.

We amend these Terms from time to time as set out in clause 16. These Terms and any Contract between us regularise our dealings with you.

1 **INFORMATION ABOUT US**

1.1 We are Tarff Valley Ltd ("**Seller**"), a company registered under company number SP0311RS with our registered office at Old Station Yard, Ringford, Castle Douglas DG7 2AN ("**Sellers Premises**"). Our main trading address is our registered address.

1.2 To contact us, in the first instance please call us on 01557 820247. Alternatively you can send an email to reception@tarffvalley.co.uk or fill out the contact page on our website: <http://www.tarffvalley.co.uk/contact/>.

2 **OUR GOODS**

2.1 "**Products**" shall mean any products provided to you by us which are not Feed Products. "**Feed Products**" shall mean products which are perishable or animal feed or other feed. Products and Feed Products shall together be referred to as "**Goods**".

2.2 The "**Buyer**" shall mean the purchaser of the Goods from the Seller.

2.3 "**Invoice**" shall mean the cost of the Goods provided by the Seller to the Buyer plus any applicable value added tax.

2.4 "**Quotation**" shall mean the estimated costs of the Goods.

2.5 "**Sales Agreement**" shall mean these Terms, the Contract and written Invoices defining the agreed relationship between the Seller and the Buyer.

2.6 The Goods to be purchased shall be described in the Invoice provided by the Seller.

2.7 The Seller reserves the right to make changes from time to time to the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality, fitness for purpose or performance of the Goods.

2.8 Although the Seller endeavours to ensure that the information contained in its brochures, catalogues and other advertising, marketing and promotional material is accurate and not misleading, the Seller makes no express representation or warranty concerning the Goods unless made or confirmed by an authorised representative of the Seller in writing.

2.9 The Buyer agrees and acknowledges that all specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's marketing materials are provided for the sole purpose of giving an approximate idea of the Goods described in them

2.10 The Seller shall not be liable for any advice or recommendation given by them to the Buyer as to the storage, application or use of the Goods.

2.11 The Buyer shall be responsible for the type of Goods they purchase from the Seller.

2.12 Where any designs and/or specifications have been supplied by the Buyer for manufacture, processing or assembly by or/to the order of the Seller the Buyer warrants that the use of those designs or specifications for the manufacturing processing or assembly shall not infringe on the rights of a third party.

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- 2.13 In the event the Goods are not available as of the date the order is confirmed by written Invoice, the Seller reserves their right to supply comparable Goods, of similar or better quality.

3 HOW THE CONTRACT IS FORMED BETWEEN THE BUYER AND THE SELLER

- 3.1 When the Seller provides the Buyer with a Quotation for the Goods and the Buyer accepts that Quotation, the Buyer shall be deemed to have made an offer to purchase Goods governed by these Terms.
- 3.2 The Seller reserves the right to issue their Invoice at the time of either the order or before on or at any time after the delivery of the Goods.
- 3.3 Upon confirmation of the order, these Terms (as they may be amended by the Seller from time to time) and Sales Agreement form a binding agreement between the Buyer and the Seller.
- 3.4 These Terms are applicable to any sales to Seller.

4 PRICE AND PAYMENT METHODS

- 4.1 The price of the Goods shall be the price offered by the Seller. The Seller reserves the right to amend and revise the prices quoted. Prices for Goods may change from time to time.
- 4.2 The price of the Goods is exclusive of VAT which shall be payable by the Buyer at the rate prevailing on the date of the VAT Invoice. Any fees, duty or taxes applied by Government or other regulatory will be billed to and paid by the Buyer as set forth on the written Invoice issued by the Seller.
- 4.3 Except as otherwise agreed by the Seller all prices are given by the Seller on the basis of delivery taking place at the Seller's Premises. The Buyer shall be responsible for the cost of transport and packaging and where the Seller agrees to arrange for the Goods to be insured in transit, the Buyer shall be responsible for the cost of insurance.
- 4.4 The Seller shall be entitled to issue an Invoice to the Buyer for the price of the Goods before, on or at any time after delivery of the Goods.
- 4.5 The Buyer must settle the Invoice for the full price of the Goods plus VAT and any other applicable costs in cash or cleared funds before the last day of the month following the month in which the Goods have been delivered unless the Seller agrees otherwise.
- 4.6 The Buyer may not withhold payment of any Invoice or other amount due to the Seller by reason of any right of set-off or counterclaim, discount abatement or otherwise which the Buyer may have or allege to have or for any reason whatsoever.
- 4.7 All payment shall be made in British Pound Sterling. Payment can be made via cheque or bank transfer directly to the Seller's nominated company account or by direct debit.
- 4.8 In the event of a deposit payment being made for the Goods this deposit is non-refundable, unless the Seller agrees otherwise.
- 4.9 Neither late payment fees nor interest will be charged by the Seller to the Buyer in the event that payment in full is made by the last day of the month following the month in which the Goods have been delivered. However, the Seller reserves the right to issue to the Buyer further monthly Invoices to the value of 1% of the sum outstanding at the end of each monthly accounting period. Nothing in these provisions will restrict the Seller's right to claim compensation and statutory interest under the provisions of the Late Payment of Commercial Debts (Interest) Act 1998, and any statutory amendments thereto.

5 DELIVERY OF GOODS

- 5.1 The Goods shall be delivered to the Seller's Premises unless the Seller agrees otherwise.
- 5.2 Any estimated delivery dates of the Goods to the Seller's Premises are approximate only and should not be relied on by the Buyer. Time for delivery shall not be of the essence of the Contract and the Seller shall not be liable for any failure of prompt delivery of the Goods (however so caused).
- 5.3 Goods shall only be delivered to a premises that is not the Seller's Premises if expressly agreed by the Seller. . If the Seller has provided written agreement, the Buyer shall provide safe and proper access and make all arrangements (including the provision of labour, equipment, storage and other facilities) necessary to take safe unloading and delivery of the Goods whenever they are tendered for delivery.
- 5.4 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 10 per cent more or 10 per cent less than the quantity ordered.
- 5.5 The Seller may deliver the Goods by separate instalments which will be reflected in the monthly invoice. Failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more of the instalments shall not entitle the Buyer to treat the Contract as a whole to be repudiated.
- 5.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- a) Store the Goods until actual delivery and charge the Buyer for the reasonable costs of storage and insurance;
 - b) Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price; or
 - c) Charge the Buyer in respect of any losses arising from any delay caused by the acts or omissions of the Buyer.
- 5.7 The Buyer must inspect all Goods upon delivery and advise the Seller of any defects within 2 days of the delivery date or all complaints as to defects are waived.
- 5.8 Upon reasonable rejection of the Goods, the Buyer timely notifying the Seller, the Buyer will be entitled to a refund of funds paid. In the event that any sums are due by the Buyer to the Seller in respect of other invoices issued by the Sellers to the Buyers, the Sellers will be entitled to apply the refund credit against other outstanding charges.
- 5.9 Risk of loss or damage to the Goods passes to the Buyer immediately upon delivery or upon transfer of the beneficial title to the Goods.
- 5.10 Where the Buyer requests that the Goods be placed directly in the safe custody of another party on behalf of the Buyer, delivery shall be deemed to take place on the date the Goods are transferred into that safe custody.

6 RETURNING THE GOODS

- 6.1 The Buyer may return any Goods delivered at the Buyers cost within 5 days of delivery if the Goods do not match the description on the delivery note.

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- 6.2 To return the Goods, the Buyer shall give written notification of the intent to return to the Seller by registered post, confirmed fax or confirmed email. If the Buyer decides to return the Goods, the Goods must be returned and received by the Seller within 5 days of receipt of confirmed notice of return from the Buyer. If the Goods are not received within 5 days of receipt of confirmed notice of return from the Buyer, the sale is deemed final and no returns of the Goods will be accepted.
- 6.3 Once a sale is deemed final, no returns will be accepted and the Buyer hereby accepts and waives any claims he/she may have under law or otherwise.
- 6.4 The Buyer is responsible for all delivery costs and insurance costs incurred for returned Goods.
- 6.5 Unless otherwise prohibited by law, full reimbursement of the purchase price of the Goods, less insurance and delivery costs, shall be the Buyer's sole remedy if the Goods are returned.

7 TITLE AND RISK

- 7.1 The Seller are not responsible for and cannot be held accountable for the nutritional value of the Feed Products unless our nutritionists have specifically formulated the Feed Products for the Buyers certain requirements. The Buyer takes responsibility for the Feed Product's they order and the risk in the Feed Products passes to the Buyer on delivery of that order. Title shall not be passed to the Buyer until the Seller has received payment in full (in clear funds) for:
- a) The Products;
 - b) No other sums whatever shall be due from the Buyer to the Seller.
- 7.2 Until title in the Goods passes to the Buyer in accordance with **Condition 7.2** the Buyer shall hold the Goods and each of them on a fiduciary basis as agent for the Seller.
- 7.3 Should the Buyer convert the Goods (or any of them) into a new product (whether or not such conversion involves the admixture of any other goods or thing whatsoever and in whatever proportions) the conversion shall be effected by the Buyer solely as agent for the Seller who shall have the full legal and beneficial ownership of the new products. Where any such conversion shall have been effected references in this **Condition 7** to 'the Goods' shall include references to any new products incorporating the Goods.
- 7.4 The Buyer shall safely store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property provided that should Goods which are the property of the Sellers be admixed with:
- a) Goods the property of the Buyer, then the Seller shall have the full legal and beneficial ownership of the product thereof; or
 - b) Goods the property of any person(s) other than the Buyer (whether or not goods of the Buyer are also included), then the Seller shall have the full legal and beneficial ownership of the product thereof in common with such person(s) other than the Buyer.
- 7.5 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell (at full market value for the account of the Seller) or otherwise deal with the Goods in the ordinary course of the Buyer's business. Any such sale or dealing shall be by the Buyer acting as principal on its own behalf who shall be liable for any claims whatsoever and howsoever arising out of any such sale or dealing.

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- 7.6 The Seller shall be entitled to recover the price (plus VAT) and any other applicable costs notwithstanding that property in any of the Goods has not passed from the Seller.
- 7.7 Until such time as property in the Goods passes from the Seller, the Buyer shall upon request deliver up to the Seller such of the Goods as have not ceased to be in existence or resold by the Buyer. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of any such request the rights of the Buyer under **Condition 7.6** shall cease.
- 7.8 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller.
- 7.9 The Buyer shall insure and keep insured the Goods to the full price against 'all-risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance.
- 7.10 Without prejudice to the other rights of the Seller, if the Buyer fails to comply with the provisions of clauses 7.9 or 7.10 all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

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8 WARRANTIES

- 8.1 The Seller makes no warranties, expressed or implied, except as specifically stated herein. Such warranties are in lieu of all other warranties, written or oral, statutory, express or implied, including without limitation, any warranty of merchantability or fitness for a particular purpose.
- 8.2 The Seller shall in no event be liable for any incidental, special, or consequential damages of any nature, even if the Seller has been advised of the possibility of such damages. In no event shall the Seller have total liability to the Buyer for all damages, losses and causes of action (whether in contract, tort or otherwise) for the value of the Goods and services provided hereunder.

9 TERMINATION BY THE SELLER

- 9.1 If the Buyer becomes subject to any of the events listed in this clause, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then without limiting any right or remedy available to the Seller, the Seller may cancel or suspend all further orders under the Sales Agreement without incurring any liability to the Buyer and all outstanding sums in respect of the Goods ordered or delivered become immediately due.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Buyer suspends, or threaten to suspends, payment of the debts, or are unable to pay the debts as they fall due or admit inability to pay their debts, or (being a company or limited liability partnership) are deemed unable to pay the debts within the meaning of section 123 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply;
 - (b) the Buyer commences negotiations with all or any class of their creditors with a view to rescheduling any of the debts, or make a proposal for or enter into any compromise or arrangement with their creditors other than (where they are a company) where these events take place for the sole purpose of a scheme for their solvent amalgamation with one or more other companies or the solvent reconstruction of their company;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer's company, other than for the sole purpose of a scheme for their solvent amalgamation with one or more other companies or the solvent reconstruction of their company;
 - (d) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Buyer's assets and such attachment or process is not discharged within 14 days;
 - (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed;
 - (f) (being a company) the holder of a qualifying charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (g) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
 - (h) any event occurs, or proceeding is taken, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(g) (inclusive);

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- (i) the Buyer suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of their business;
- (j) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil their obligations under the Contract has been placed in jeopardy.

9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10 BUYERS LIABILITY FOR INVOICES

10.1 If an order is placed by a partnership each of the partners is jointly and severally liable for payment of our invoices. If an order is placed by a company, the directors will be personally liable (jointly and severally) for our charges if the company does not pay our invoices when they are due for payment. If an order is placed by a limited liability partnership each of the members is jointly and severally liable for payment of our invoices if the limited liability partnership does not pay our invoices when they are due for payment. If an order is placed by a corporation, society, unincorporated association or trust ("organisation"), the executive officers/trustees of the organisation will be personally liable (jointly and severally) for our charges if the organisation does not pay our invoices when they are due for payment. In these circumstances the Seller may credit original invoices and issue new invoices to any one or more of the liable parties.

11 SELLERS LIABILITY

11.1 Nothing in these Terms limit or exclude the Sellers liability for:

- a) death or personal injury caused by the Sellers negligence; or
- b) fraud or fraudulent misrepresentation.

11.2 Subject to clause 11.2, the Seller under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with the Contract 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 data or information; or
- g) any form of indirect, special or consequential loss whatsoever or howsoever caused.

11.3 Subject to clause 10.1 and 10.2 the Sellers total liability to the Buyer in respect of all other losses arising under or in connection with the Sales Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed the purchase price.

11.4 The Buyer acknowledges that in entering into the Sale Agreement, the Buyer has not relied on any statement, representation, warranty, undertaking or other assurance given or made by any person (whether a party to the sale agreement or not) other than as expressly set out or referred to in these Terms and the Sale Agreement. The Buyer hereby

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waives all rights and remedies howsoever arising which, but for this clause, might otherwise be available to the Buyer in respect of any such representation, warranty, undertaking or other assurance.

12 FORCE MAJEURE

12.1 The Seller shall not be liable for any failure to perform, or delay in performance of, any of the Sellers obligations under the Sales Agreement that is caused by Force Majeure. Force Majeure is described in clause 12.2.

12.2 "**Force Majeure**" shall mean any act or event beyond the Sellers reasonable control including without limitation, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other disaster, supplier failures, shortages, breaches or delays, inability to acquire materials for Goods or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

12.3 If a Force Majeure event takes place that affects the Sellers performance of obligations under the Sales Agreement:

- a) the Seller shall contact the Buyer as soon as reasonably possible to notify the Buyer; and
- b) the Seller's obligations under the Sales Agreement shall be suspended and the time for performance of the Sellers obligations will be extended for the duration of the Force Majeure event. When the Force Majeure event affects the delivery of the Goods, the Seller shall arrange a new delivery date with the Buyer once the Force Majeure event is over.

12.4 The affected party, be it the Buyer or the Seller, shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents or special losses, any loss of use, profit, business, revenue or contract or any liability of the Buyer to any third party.

13 COMMUNICATION

13.1 All notices shall be in writing and sent by post, facsimile or email to the address of the Buyer stated in any Quotation, sales Invoice, order or acknowledgement of order.

13.2 Notices shall be deemed to be received if sent by post, on the second day following the day of posting and, if sent by email or facsimile, on day of transmission (if sent before 4:00 pm).

14 GENERAL

14.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

14.2 No failure or delay by the Seller to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

14.3 The Buyer and the Seller do not intend that any term of these Terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party of it.

15 DATA PROTECTION

15.1 The Buyer should refer to the privacy policy on the Seller's website for further information on how the Seller uses the Buyer's data in accordance with the General Data Protection

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Regulations (GDPR) which can be found here: <http://www.tarffvalley.co.uk/wp-content/uploads/2018/05/Tarff-Valley-GDPR-Policy.pdf>

16 COPYRIGHT AND CONFIDENTIALITY

- 16.1 Copyright, trademarks, database rights and all similar rights and marketing materials are owned by the Seller, its licensors or relevant third party content providers. Such information may not otherwise be reproduced, distributed, stored in a data retrieval system or transmitted in any form or by any means without the prior written permission of the Seller.
- 16.2 Nothing in the Seller's marketing materials or on their website or literature should be considered granting any license or right under any trademark of the Seller or any third party.

17 SELLERS TO VARY THESE TERMS

- 17.1 We may revise these Terms from time to time in the following circumstances:
- a) changes in how the Seller accept payment from the Buyer;
 - b) changes in relevant laws and regulatory requirements; and
 - c) changes in the nature and make-up of our business.
 - d) Every time the Buyer orders Goods from the Seller, the Terms in force at that time will apply to the Contract between the Buyer and the Seller.

18 OTHER IMPORTANT TERMS

- 18.1 These Terms constitute the entire understanding of the Buyer and the Seller and supersede all prior discussions, negotiations, agreements and understandings, whether oral or written.
- 18.2 If any part of these Terms are held invalid, unenforceable or void by a court of competent jurisdiction, these Terms are considered divisible as to such part, and the remainder of these Terms are valid and binding as though such part was not included in these Terms.
- 18.3 These Terms are governed by the laws of Scotland (without regard to the laws that might be applicable under principles of conflicts of law) as to all matters, including, but not limited to, matters of validity, construction, effect and performance unless your order was placed with a branch outside of Scotland or main centre of your business is located in England or Wales, in which case these Terms and any disputes and claims arising out of or in connection with them (including non-contractual claims and disputes), is governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall also have jurisdiction in addition to the Scottish courts. In the event a litigation or dispute resolution process becomes necessary to enforce these Terms and the relevant jurisdiction is disputed, the Buyer agrees the jurisdiction and/or venue choice shall be reserved solely to the Seller.
- 18.4 Nothing in these Terms affects the statutory rights of any consumer.
- 18.5 These Terms and any document expressly referred to in them constitute the entire agreement between the Buyer and the Seller. The Buyer acknowledges that they have not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in these Terms or any document expressly referred to in them.