

Pentarch Farms Pty Ltd

Terms of Trade

1 Definitions

CFR has the meaning given to it in the Incoterms.

Company means Pentarch Farms Pty Ltd (ACN 123 956 105) and its successors and assigns.

Customer means the party acquiring Goods on these Terms.

Default Rate means 1.5% per month.

Delivery means delivery of the Goods by the Company to the Customer in accordance with clause 8.

Goods mean any commodity that the Company offers for sale.

Incoterms means the International Chamber of Commerce rules for the interpretation of the trade terms 2010.

Indirect Loss means loss of profit, loss of revenue, loss of opportunity, loss of reputation or goodwill or loss of savings, whether such loss was direct, indirect or consequential.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or administration, having a controller or similar appointed to it or its property, being taken to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or becoming incapable of managing its affairs for any reason, taking any step that could result in becoming insolvent under administration, entering a compromise or arrangement with, or assignment for the benefit of, its members, creditors or any analogous event.

PPSA means *Personal Property Securities Act 2009* (Cth).

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Sales Contract means the contract entered into by both the Company and the Customer for the export of particular Goods.

Secured Property means all Goods that are supplied to the Customer by the Company (whether now or in the future).

Security Interest is defined in section 12 of the PPSA.

Terms means these terms of trade for the provision of the Goods.

2 General

2.1 The Company agrees to supply and the Customer agrees to purchase the Goods in accordance with these Terms and the terms contained in the Sales Contract.

2.2 These Terms and the Sales Contract will apply to any Goods sold to the Customer.

2.3 These Terms are deemed to be incorporated into all Sales Contracts between the Company and the Customer, and will prevail over any inconsistent terms in any of the Customer's documents and policies unless otherwise agreed by the Company in writing.

2.4 If the Customer enters into a Sales Contract with the Company for Goods, and Goods are delivered or sold to the Customer, or the Customer makes any payments to the Company, the Customer is taken to have accepted these Terms and the terms contained in the Sales Contract.

2.5 The Customer must, no less than 14 days prior to any change of ownership, registered particulars, shareholding, directorship, name or address, notify the Company of the proposed change.

3 Termination of Sales Contracts

3.1 Sales Contracts cannot be modified or terminated after acceptance by the Customer except with the Company's written consent.

3.2 The Company may immediately terminate any Sales Contract (in whole or in part) by notice to the Customer and resell the Goods if the Customer fails to comply with any of its obligations under these Terms or under the Sales Contract for the supply of Goods, or if an Insolvency Event occurs in respect of the Customer.

3.3 If a Sales Contract is terminated by the Customer or by the Company pursuant to clause 3.2 above, the Customer must pay to the Company a reasonable termination fee (as set by the Company). The Customer acknowledges that the termination fee is a genuine pre-estimate of the Company's loss suffered should the Sales Contract be terminated by the Customer.

4 Goods

4.1 The Customer must inspect the Goods upon delivery.

4.2 The Customer must give written notice to the Company of any claim in the event that the Goods are defective, supplied in error, or if there are any discrepancies in the quantity delivered (including particulars of the claim) within 45 days of delivery at the location of the port specified in the Sales Contract.

4.3 If the Customer fails to give written notice to the Company pursuant to clause 4.1 above, then to the extent permitted by law, the Goods are deemed to have been accepted by the Customer in accordance with these Terms.

5 Customer Indemnity

5.1 The Customer indemnifies the Company (including its officers, employees or agents) against any liability, loss, Indirect Loss, damage, charge, expense, outgoing or cost incurred arising out of:

- (a) the termination of a Sales Contract by the Customer;
- (b) the Customer's failure to pay for or take delivery of the Goods;
- (c) the failure of the Customer to comply with any of its obligations under these Terms;
- (d) the failure of the Customer to comply with any of its obligations under the Sales Contract; or
- (e) the Company exercising any of its rights under these Terms.

- 5.2 For the purpose of the indemnity in clause 5.1 and without limiting the generality of the indemnity in clause 5.1, any liability, loss, damage, charge, expense, outgoing or cost incurred by the Company will include the following:
- (a) any foreign exchange cost;
 - (b) any amount paid or payable by the Company to a third party supplier for the acquisition of the relevant Goods being on sold to the Customer;
 - (c) the cost of relocating or recovering the Goods;
 - (d) any import or export duty or tax;
 - (e) any demurrage cost;
 - (f) storage cost or warehousing costs; and
 - (g) any freight costs.

6 Price of Goods

- 6.1 Unless the Company agrees in writing, the price of the Goods will be the price set out in the Sales Contract.

7 Payment Terms and Default

- 7.1 Subject to clause 1 and this clause 7, the price for the Goods will be the price specified in the Sales Contract, unless otherwise agreed in writing between the parties.
- 7.2 Unless otherwise agreed in writing by the Company, the Customer must pay for the Goods in accordance with the payment terms set out in the Sales Contract.
- 7.3 The time for payment of the Goods is of the essence, and all payments must be made on or before the due date as a condition to future deliveries of Goods under these Terms and the terms set out in the Sales Contract.
- 7.4 The Company reserves the right to vary the terms of payment and to require additional security at any time prior to delivery of the Goods if the creditworthiness of the Customer becomes unsatisfactory in the Company's opinion, the Company may require security from the Customer.
- 7.5 The Company may require immediate payment of all amounts outstanding (whether or not then due and payable):
- (a) if the Customer does not comply with these Terms;
 - (b) if the Customer does not comply with the terms of the Sales Contract;
 - (c) the Customer terminates the Sales Contract;
 - (d) if the Company considers that the creditworthiness of the Customer has become unsatisfactory; or
 - (e) if one or more Insolvency Events occur.
- 7.6 If there is a change in the law of the country in which a port is located and the Company has to comply with such a change in law as part of the provision of the Goods to the Customer, the Customer must, when requested by the Company pay Company the amount of this cost.
- 7.7 All payments must be made in accordance with the payment terms specified in the Sales Contract (or another method agreed by the Company in writing from time to time).

- 7.8 Without limiting any rights of the Company, any monies owing by the Customer to the Company which are not paid when due will bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such monies first become due to the Company.

- 7.9 If the Customer has not paid the Company in full any monies owing to the Company by the due date, the Company may in its sole discretion without giving the Customer prior notice terminate these Terms or the applicable underlying Sales Contract and seek to recover the Goods and resell or dispose of the Goods, without prejudice to any claims for loss or damages against the Customer. In the event that the Customer has not paid any monies owing to the Company by the due date, the Customer is liable to pay the Company's reasonable costs with respect to collecting any overdue monies, including without limitation legal fees, debt collection costs and payment of the Company's administrative costs.

8 Acceptance and Delivery

- 8.1 The parties agree that the Goods will be delivered CFR at the location of the port specified in the Sales Contract (**Delivery**).
- 8.2 The Company will have the sole and absolute discretion as to the choice of carrier and method of carriage of the Goods. The Company agrees to work with the Customer to agree on a mutually beneficial choice of carrier and method of carriage of the Goods at a reasonable cost to the Customer.
- 8.3 Any time quoted for delivery is an estimate only. The Customer must accept the Goods even in the event of a delay in delivery.
- 8.4 Subject to law, the Company is not liable to the Customer for any loss or damage (including Indirect Loss) arising from late delivery of the Goods.
- 8.5 If the Company determines that it is or may be unable to deliver the Goods within a reasonable time (or at all) the Sales Contract may be cancelled by the Company in its sole and absolute discretion by giving the Customer 30 days' notice in writing of the Company's intention of doing so.
- 8.6 Subject to law, if Sales Contract is terminated, the Customer will have no claim against the Company for any loss or damage (including Indirect Loss) arising from the termination.

9 Security Interest

- 9.1 The Customer acknowledges that these Terms create a Security Interest in the Secured Property and the proceeds of sale of the Secured Property for the purposes of the PPSA or other similar international legislation.
- 9.2 The Customer consents to the Company effecting a registration on the PPSR or other similar international register (as the Company deems appropriate) in relation to the Security Interest arising under or in connection with these Terms and the Customer agrees to provide all assistance required by the Company to facilitate this.

- 9.3 The Customer acknowledges and agrees that in relation to the part of the Secured Property that is inventory, the Customer will not allow any Security Interest to arise in respect of that Secured Property unless the Company has perfected the Security Interest in the Secured Property prior to the Customer's possession of the Secured Property.
- 9.4 If the Customer makes payments to the Company at any time whether in connection with these Terms or otherwise, the Company may in its absolute discretion apply that payment in any manner it sees fit.
- 9.5 The Customer agrees to do anything that the Company requests the Customer to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
- (a) to provide more effective security over the Secured Property;
 - (b) to register in respect of a Security Interest constituted by these Terms at any time;
 - (c) to enable the Company to exercise its rights in connection with the Secured Property; and
 - (d) to show the Company the Customer has met the Terms.
- 9.6 The Customer waives the right to receive any notice under the PPSA or similar international laws (including notice of a verification statement) unless the notice is required by the PPSA or similar international laws and cannot be excluded.

10 Limitation of Liability and Indemnity

- 10.1 Except as expressly set out in these Terms, in the Sales Contract or as required by law, the Company makes no warranties or other representations to the Customer. The Customer's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.2 Subject to the law, the Company, its employees, contractors and/or agents will not be liable for any loss or damage (including Indirect Loss) of any kind whatsoever, even if due to the negligence of the Company, its employees and/or agents.
- 10.3 The Customer acknowledges that it has not relied on any representation, description, or statement by the Company in relation to the Goods, or the skill or judgement of the Company, its agents, contractors or employees, as to if the Goods are fit for a particular purpose.
- 10.4 The Customer acknowledges it has relied solely on its own inspection, skill and judgement in purchasing the Goods.

11 Title, risk and Insurance

- 11.1 Risk in Goods will pass to the Customer upon Delivery of the Goods by the Company (unless otherwise agreed in writing).
- 11.2 Title in the Goods will not pass to the Customer until the Customer has paid the Company all amounts owing (all cheques or negotiable instruments have been paid) and the Customer has met all other obligations due by the Customer to the Company in respect of these Terms and all other contracts with the Customer and the Company, and until the above obligations have been satisfied, the Customer acknowledges and agrees that the Customer:

- (a) holds the Goods as bailee only;
- (b) must store the Goods supplied in a way that it is clear that they are the Company's property; and
- (c) irrevocably authorises the Company to enter any premises where the Goods are kept and, if necessary, to use the Customer's name and to act on the Customer's behalf to recover the Goods.

- 11.3 It is the Customer's sole right but not its obligation to take out and pay for insurance that is sufficient to cover their interests in the Goods prior to Delivery.

12 Privacy

- 12.1 The Company will collect information in relation to the Customer, for the purpose of providing the Goods to the Customer in accordance with these Terms, and in accordance with the laws relating to the collection and disclosure of personal information under the Privacy Act 1998 (Cth) as amended from time to time.

13 Force Majeure

- 13.1 A party is not liable for any failure to comply with these Terms (other than an obligation to pay money), the Sales Contract or any agreement for the sale of Goods (other than an obligation to pay money) if the failure (directly or indirectly) arises by virtue of a Force Majeure Event. If such circumstances occur, the performance of that party's obligations in accordance with these Terms (other than an obligation to pay money) will be suspended for so long as the Force Majeure Event continues or prevails.
- 13.2 For the purpose of this clause 12, a "Force Majeure Event" is an event that is taken to be beyond a party's reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, act of God or any order or direction of any local, state or federal government, government authority or instrumentality.
- 13.3 A party is not obliged to remedy such circumstances in respect of a Force Majeure Event.
- 13.4 If a Force Majeure Event continues for more than 30 days in respect of a party, the other party may terminate the Sales Contract by giving 5 Business Days written notice.
- 13.5 Nothing in this clause 12 releases the Customer from any obligations to pay the Company in accordance with these Terms or the Sales Contract for any liability incurred up to the date of the Force Majeure Event.

14 Arbitration

- 14.1 All disputes arising out of, or in connection with the Terms, shall be finally settled under the UNCITRAL Arbitration Rules taking into account the following:
- (a) The parties agree that the number of arbitrators shall be 1;
 - (b) the seat, or legal place, of arbitration shall be Melbourne, Australia;
 - (c) the language used in the arbitral proceedings shall be English; and

- (d) the governing law of the Terms (including any arbitration under this clause 14) shall be the in law in force in Victoria, Australia.

15 Exclusion of the Vienna Convention

- 15.1 The parties acknowledge and agree that the rights and obligations of the parties under these Terms and the Sales Contract shall not be governed by The United Nations Convention on Contracts for the International Sale of Goods (1980).

16 General

- 16.1 Any right that the Company may have under these Terms is in addition to, and does not replace or limit, any other right that the Company may have.
- 16.2 Any provision of these Terms which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these Terms enforceable, unless this would materially change the intended effect of these Terms.
- 16.3 The Company is entitled to vary these Terms at any time upon consultation with the Customer and by giving the Customer 14 day's prior written notice.
- 16.4 The Customer must not assign its benefits or novate its obligations under these Terms without the prior written consent of the Company in writing.
- 16.5 The Company may assign its rights and novate its obligations under these Terms to another person without the consent of the Customer.
- 16.6 These Terms together with the Sales Contract constitute the entire agreement between the Company and the Customer and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing. All other terms and conditions are excluded to the fullest extent permitted by law including any terms and conditions which the Customer may from time to time seek to impose.
- 16.7 These Terms will be governed by and construed in accordance with the laws in force in Victoria, Australia.
- 16.8 Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with these Terms, and waives any right it might have to claim that those courts are an inconvenient forum.
- 16.9 A right of the Company may only be waived in writing, signed by the Company. No other conduct of the Company (including a failure to exercise, or delay in exercising, the right) operates as a waiver or prevents the exercise of the right. A waiver of a right by the Company on one or more occasions does not operate as a waiver of that right if it arises again. The exercise of a right by the Company does not prevent any further exercise of that right or of any other right.

