

## Terms and Conditions of Sale

The Buyer's attention is drawn in particular to the provisions of condition 11 (Liability).

### 1. Definitions

1.1. In these Conditions, the following definitions apply:

**"Applicable Law"** means all applicable laws, regulations, regulatory requirements, codes of practice, and guidance in force from time to time in the United Kingdom and/or governing the provision of the Goods;

**"Buyer"** means any person, other customer, company or organisation who buys or agrees to buy Goods from or through Harpers;

**"Conditions"** means the terms and conditions of sale set out in this document and any amendments agreed in writing by Harpers in accordance with condition 2.3;

**"Contract"** means the contract between Harpers and the Buyer for the sale and purchase of the Goods which incorporates these Conditions;

**"Delivery Point"** means the place at which delivery of the Goods is to take place as agreed between the parties;

**"Goods"** means the goods purchased by the Buyer (or any part of them);

**"Harpers"** means Harpers Home Mix Limited (registered in England and Wales with company number 02737188), including, when trading as Harpers Feeds or Harpers Farm Supplies (as the case may be); and

**"Supplemental Feed Contract"** means a supplemental feed contract entered into by Harpers and the Buyer.

### 2. Basis of Contract

2.1. These Conditions do not affect the statutory rights of a consumer.

2.2. Subject to (where applicable) any Supplemental Feed Contract entered into by the Buyer, all contracts of sale for Goods made by Harpers shall be deemed to incorporate these Conditions which shall prevail over any terms implied by trade, custom, practice or course of dealing or any conditions or any other document or communication from the Buyer, howsoever made.

2.3. Any amendments to these Conditions must be requested in writing and shall only be effective unless it is signed by Harpers.

2.4. Each order or acceptance of a quotation for Goods by the Buyer from Harpers shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions. The Buyer acknowledges and agrees that acceptance by Harpers of the Buyer's order shall be deemed conclusive evidence of the Buyer's acceptance of the Conditions.

2.5. An order is deemed to have been received from a Buyer either when placed in person or by phone, fax or email.

2.6. The validity period of any quotation is stated on a quotation provided by Harpers. Harpers reserves the right to withdraw the quotation prior to the expiry of such validity period.

- 2.7. Any advice or recommendation given by Harpers or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Harpers is followed or acted on entirely at the Buyer's own risk. Harpers shall not be liable for any such advice or recommendation which is not so confirmed in writing.
- 2.8. No oral or written information or advice given by Harpers, its employees, distributors, dealers or agents shall create any warranty of any kind. Unless otherwise agreed between the parties in writing, advice by Harpers to the Buyer shall not form part of the Contract.
- 2.9. Any samples, photographs, descriptive matter or advertising produced by Harpers are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

### **3. Orders**

- 3.1. The Buyer shall be responsible to Harpers for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving Harpers any necessary information relating to the Goods within a sufficient time to enable Harpers to perform the Contract in accordance with its terms.
- 3.2. The details of the Goods and any specification for them shall be as set out in Harpers' quotation (if accepted by the Buyer) or the Buyer's order (if accepted by Harpers).
- 3.3. Where Goods are made to the Buyer's specification, Harpers' has no liability for damage caused as a result of such specification being nutritionally inadequate for the animals for which it is used by the Buyer.
- 3.4. Harpers reserves the right to make any changes in the specification of the Goods (at any time) which are required to conform with any Applicable Laws or, where the Goods are to be supplied to Harpers' specification, which do not materially affect their quality or performance.
- 3.5. No order which has been accepted by Harpers may be cancelled by the Buyer except:
  - a) as expressly permitted by these Conditions; or
  - b) with the written agreement of Harpers and on terms that the Buyer shall indemnify Harpers in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Harpers as a result of such cancellation.

### **4. Prices**

- 4.1. The price of the Goods shall be that stated on Harpers' list price applicable at the time a purchase is made, or if applicable the price contained in Harpers' quotation or contract (including any Supplemental Feed Contract), including any rebates or surcharges where applicable, errors and omissions excepted.
- 4.2. Harpers reserve the right to amend the price of the Goods:
  - a) if required by Applicable Laws; or
  - b) if the price of the Goods is subject to alteration due to the imposition of or alteration by the European Union or the United Kingdom 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 the first order under the Contract.

- 4.3. All prices will be exclusive of VAT which will be added at the appropriate rate where applicable.
- 4.4. Prices may be subject to change without notice excepting where a firm price is quoted for acceptance within a stated period of time.
- 4.5. Delivery may be charged separately other than where a net delivered price has been agreed in advance.

## **5. Payment Terms**

- 5.1. Harpers may invoice the Buyer for the Goods on or at any time after the Goods have been ordered, delivered or collected.
- 5.2. Harpers' standard terms for payment of invoices is for receipt of payment by cheque, cash, credit card, debit card or by receipt at Harpers' nominated bank by 23<sup>rd</sup> of the month following the month of purchase of the Goods.
- 5.3. No payment shall be deemed to have been received until Harpers has received cleared funds.
- 5.4. Failure to effect payment by the due date(s) will result in interest charges being applied at the rate of 1% per month on the overdue amount. The right is reserved to change the rate of interest subject to 14 days' notice being given by Harpers.
- 5.5. Time for payment shall be of the essence and any failure to pay shall entitle Harpers at its option to treat the Contract as repudiated by the Buyer and/or to delay delivery, collection or sale of any further goods until all outstanding invoices have been paid in full.
- 5.6. Continued failure to pay accounts as due may result in the Harpers, in its absolute discretion, suspending all or part of the trading facilities of the Buyer with Harpers. Payment of account balances shall be settled by cash or cheque, or by direct debit or direct payment to Harpers' nominated bank, the details of which may be obtained from Harpers.
- 5.7. Although Harpers reserves the right to refuse any request for alternative payment options, alternative options for payment are available as follows:
  - a) 7-day, 10 day, 14 day, 60 day or monthly direct debit (which, as determined by Harpers, may or may not attract a discount); or
  - b) in person by cash, cheque or debit or credit card in Harper's customer Reception area at Waldon Way, Holsworthy Industrial Estate, Holsworthy or Harpers Farm Supplies, Harrier Park, Shadrick Way, Holsworthy Industrial Estate, Holsworthy, Devon, EX22 6FU.
- 5.8. Notwithstanding the payment terms set out herein, Harper's reserves the right to request the immediate payment of any account at any time.
- 5.9. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Harpers may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by Harpers to the Buyer.
- 5.10. The Buyer shall inform Harpers if it undergoes a change of ownership or its trading name changes in any way.

## 6. Delivery

- 6.1. Harpers will take all reasonable endeavours to deliver the Goods to the Delivery Point or have them available for collection when required by the Buyer. Delivery will be to the Delivery Point only and will not include the means of unloading or of the positioning of the Goods in any location at the Delivery Point. Any assistance given by Harpers' employees, sub-contractors or others in respect of delivery or collection shall be at the risk of the Buyer.
- 6.2. Harpers will use reasonable endeavours to meet any agreed delivery or collection date. Should this not be possible Harpers will use reasonable endeavours to deliver or make available for collection part of an order on the agreed delivery or collection date
- 6.3. Where an agreed delivery or collection date cannot be met by Harpers, the Buyer will be given the option to agree a new delivery or collection date or to cancel the order.
- 6.4. Whilst reasonable endeavours will be made to keep any delivery or collection date, time of delivery or collection shall not be of the essence and Harpers shall not be liable for any:
- a) losses, costs, damages or expenses incurred by the Buyer or any other person or company arising directly or indirectly out of any failure to meet any estimated delivery or collection date; or
  - b) delay in delivery or collection of the Goods that is caused by a Force Majeure Event (as defined in condition 12) or the Buyer's failure to provide Harpers with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.5. If Harpers fails to deliver the Goods or make such Goods available for collection, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 6.6. If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or Harpers is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by Harpers' negligence);
  - b) the Goods shall be deemed to have been delivered; and
  - c) Harpers may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.7. The Buyer shall provide at the Delivery Point and at its expense adequate, safe and appropriate access, equipment and labour for loading or unloading the Goods, as applicable. Without prejudice to the foregoing, the conditions and area for delivery of the Goods must meet Harpers' health and safety requirements.
- 6.8. Harpers may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 6.9. The Buyer shall not be entitled to reject the Goods if Harpers delivers or makes available for collection up to and including 5% more or less than the quantity of Goods ordered (but a pro rata adjustment

shall be made to the relevant invoice on receipt of written notice from the Buyer that the wrong quantity of Goods was delivered or collected).

- 6.10. Goods delivered or collected on pallets will be subject to a charge per pallet. This charge will be refundable when such pallets are returned by the Buyer in undamaged condition, and at the Buyer's cost. The pallets will remain the property of Harpers until payment has been received or the pallets have been returned to Harpers. The Buyer shall make such pallets available for collection at such times as Harpers reasonably requests.

## 7. Title and Risk

- 7.1. Title in any Goods sold by Harpers shall not pass to the Buyer until Harpers receives payment in full of all sums due to Harpers (in cash or cleared funds) for:

- i. the Goods; and
- ii. any other goods that Harpers has supplied to the Buyer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

- 7.2. Subject to condition 6.6, risk in Goods shall pass to the Buyer upon delivery or collection by the Buyer.

- 7.3. Until title to the Goods has passed to the Buyer, the Buyer shall:

- a) store the Goods for which it has not paid separately from all other goods held by the Buyer so that they remain readily identifiable as the Harpers' property;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
- d) allow Harpers (or its representatives) to enter its premises during working hours to inspect and/or remove such Goods (without prejudice to the Harpers' right to receive the full amount due under a Contract);
- e) be responsible for ensuring that its employees and agents shall take all necessary protective precautions in the handling and use of the Goods to comply with COSHH and medicated feed regulations that apply. Product information literature can be supplied by the Seller on request by the Buyer.

## 8. Quality

- 8.1. Subject to condition 8.3, Harpers warrants that on delivery, and for a period of 1 month from the date of delivery or collection, or until the use by date on the relevant Goods' packaging (whichever period is shorter) ("**Warranty Period**"), the Goods shall:

- a) conform with their description;
- b) be free from material defects in design, material and workmanship; and
- c) be fit for any purpose held out by Harpers.

- 8.2. Subject to condition 8.3, if:

- a) the Buyer gives notice in writing to Harpers during the Warranty Period within 7 days of discovery that some or all of the Goods do not comply with the warranty set out in condition 8.1;
- b) Harpers is given a reasonable opportunity of examining such Goods; and
- c) the Buyer (if asked to do so by Harpers) returns such Goods to Harpers' place of business at the Buyer's cost,

Harpers shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

8.3. Harpers shall not be liable for any Goods' failure to comply with the warranty set out in condition 8.1 in any of the following events:

- a) the Buyer makes any further use of such Goods after giving notice in accordance with condition 8.2;
- b) the defect arises because the Buyer failed to follow Harpers' oral or written instructions (including, without limitation, any instructions and/or labelling included on the Goods (or its packaging) by Harpers or any third-party supplier) as to the storage, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- c) the Buyer alters or repairs such Goods without the written consent of Harpers;
- d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- e) the Goods differ from their description as a result of changes made to ensure they comply with Applicable Law.

8.4. Except as provided in this condition 8, Harpers shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in condition 8.1.

8.5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

8.6. In the event the Buyer requests Goods to be returned that were ordered in error or are no longer required, Harpers may (in its sole discretion) accept the return of such Goods, subject to a handling and restocking charge equivalent to 10% of the value of the Goods being returned.

8.7. These Conditions shall apply to any repaired or replacement Goods supplied by Harpers.

8.8. It is not possible to purchase raw materials that are 100% biologically pure, so raw materials and therefore finished feed are susceptible to adventitious contamination from weed seeds, vetches, bacteria, moulds and mycotoxins. Due to the nature of organic raw materials and feeds where chemicals such as pesticides, fungicides and many preservatives are prohibited, contamination may more severely impact on organic livestock performance. The Seller shall not be liable for any damages incurred, whatever direct, indirect or consequential, due to contamination and anti-nutritional factors inherent in conventional and organic feeds.

## 9. Goods

9.1. The Buyer shall be responsible for ensuring that its employees, servants and agents shall, take all necessary protective precautions in the handling and use of the Goods to comply with Applicable Laws

(including, without limitation, such Control of Substances Hazardous to Health Regulations 2002 and medicated feed regulations that apply). Additional information in respect of the Goods can be supplied by Harpers on written request by the Buyer.

- 9.2. Harpers will observe the Department for Environment, Food and Rural Affairs' ("**DEFRA**") Code of Practice for the control of salmonella in the production of final feed for livestock, or any amendment thereof (the "**Code of Practice**").
- 9.3. The Buyer acknowledges and agrees that salmonella and mycotoxins are ubiquitous, and as such cannot be completely eliminated from animal feeds. Therefore, where Harpers has complied with DEFRA's Code of Practice, Harpers shall have no liability if there are salmonella or mycotoxins present in any Goods.
- 9.4. The Goods shall be available for delivery or collection as required under the Contract irrespective of salmonella sampling, monitoring or testing.
- 9.5. In the event that DEFRA issues an order preventing the movement of the Goods prior to the date of delivery or collection under the Contract (the "**Order**"), Harpers shall notify the Buyer in writing within 2 working days of the Order and the delivery or collection shall then be delayed until the Order is lifted (provided this does not exceed 30 consecutive days).
- 9.6. If the Order delays delivery or collection 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 written notice to be received by Harpers not later than the first working day after the 30-day period. If the Buyer does not exercise this option, such delayed portion shall be automatically extended for a further period of 30 days.
- 9.7. If delivery or collection is prevented for more than the further 30 consecutive days extension, the Contract shall automatically terminate.
- 9.8. The Buyer shall have no claim against Harpers for delay or non-fulfilment due to an Order provided that Harpers shall have supplied to the Buyer, if required, satisfactory evidence justifying the delay.
- 9.9. It is not possible to purchase raw materials that are 100% biologically pure, so raw materials and therefore the Goods (including, without limitation, animal feeds) are susceptible to adventitious contamination from weed seeds, vetches, bacteria, moulds and mycotoxins. Due to the nature of organic raw materials and feeds where chemicals such as pesticides, fungicides and many preservatives are prohibited, contamination may more severely impact on organic livestock performance. Harpers shall not be liable for any damages incurred, whether direct, indirect or consequential, due to contamination and anti-nutritional factors inherent in conventional and organic feeds.

## **10. Complaints**

- 10.1. Subject to condition 8.2, if there is cause for complaint about our service or any Goods purchased from or supplied by Harpers the Buyer must contact Harpers immediately or in any event within 7 days of receipt of such Goods.
- 10.2. Harpers will respond as soon as possible after receiving a notice of a complaint and will use reasonable endeavours to provide a resolution within 5 working days. All complaints will be dealt with in a fair and confidential manner.

## 11. Liability

- 11.1. In the event of any breach of these Conditions by Harpers the remedies of the Buyer shall be limited to damages which shall in no circumstances exceed the price of the Goods and Harpers shall under no circumstances be liable for any indirect, incidental or consequential damages.

## 12. Force Majeure

- 12.1. In the event that Harpers is prevented from carrying out its obligations under a Contract as a result of any cause beyond its control such as: (but not limited to) war, strikes, lock-outs, flood, accidents, breakdown of machinery, industrial disputes epidemic, pandemic or similar events, natural disasters or extreme adverse weather conditions, (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosion, collapse of building structures, fire, drought, storm, loss at sea or failure of any third parties (a "**Force Majeure Event**"), Harpers shall be relieved of its obligations and liabilities under such Contract for as long as such obligations are prevented.
- 12.2. During a Force Majeure Event, where it is possible to do so, Harpers shall use reasonable endeavours to offer suitable alternative goods but shall not be bound to do so at the same price(s) as may be in the Contract.

## 13. Returns

- 13.1 Due to the nature of the Sellers products in general terms feed may not be returned. However, if it is agreed that the goods (eg bagged feed are to be returned then:
- a) The Seller will not accept any bagged feed of which the bags have been opened or in any way damaged, other than they were opened in order to use the goods.
  - b) The Buyer will be liable for the cost of remedying any damage to the goods returned where such damage has, in the opinion of the Seller, been caused through the Buyer's fault
  - c) The Seller reserves the right to make a handling and restocking charge of 10% of the value of the goods which are returned if they were ordered in error or are no longer required. If the goods are faulty or being returned under complaint the restocking charge will not apply. be fit for any purpose held out by Harpers.
  - d) This does not affect the Buyers rights under the Consumer Rights Act 2015.
  - e) For non-feed items purchased from Harpers Fam Supplies Goods (stock items) may be returned, within 30 days, if they are unused and in perfect condition with original packaging etc.
  - f) Special order items may only be returned subject to our discretion and will be decided upon an individual basis.

## 14. Assignment

- 14.1. Harpers may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.



14.2. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Harpers.

**15. No Waiver**

15.1. Harpers failure to insist upon strict performance of any provision of these Conditions shall not be deemed to be a waiver of its rights or remedies in respect of any present or future default of the Buyer in performance of or in compliance with any of these conditions.

**16. Notices**

16.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

**17. Third Party Rights**

17.1. No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms

**18. Relationship**

18.1. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between Harpers and the Buyer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

**19. Governing Law**

19.1. This Contract and these Conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall in all respects be governed by and construed in accordance with the law of England.

**20. Severance**

20.1. If any part of these terms and conditions that is not fundamental is found to be illegal or unenforceable, such finding will not affect the validity or enforceability of the remainder of these Conditions.

**21. Jurisdiction**

21.1. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or these Conditions or its subject matter or formation (including non-contractual disputes or claims).