

AFFCO TERMS AND CONDITIONS OF INTERNATIONAL TRADE

Dated 15/04/15



1. **General Conditions**
All Goods sold by the Seller are sold subject to the Terms and Conditions of Contract.
2. **Definitions**
"Buyer" means the purchaser under any contract for the purchase of any Goods from the Seller (and if more than one Buyer, jointly and severally);
"Document" includes any message sent by facsimile or electronic transmission including attachments to any electronic transmission and all such documents shall be deemed to be "in writing";
"Electronic Transmission" includes any form of electronic transmission through the internet and or World Wide Web of written messages and documents;
"Goods" means any meat or meat products and animal by-products including but not limited to offals, meals, tallow, casings, blood, hides and skins;
"Price" means the total sum payable, without deduction or set-off to the Seller by the Buyer for Goods supplied pursuant to the Terms and Conditions of Contract;
"Purchase Order Confirmation" means the document headed "Purchase Order Confirmation" directed by the Seller to the Buyer confirming:
(a) in any case in which the Buyer offers to buy Goods from the Seller, that the Buyer's offer has been accepted by the Seller; or
(b) in any case in which the Seller has offered to sell Goods to the Buyer; that any Buyer's acceptance has been approved by the Seller; and
AND may contain additional terms and conditions of the sale (e.g. price, quantity, type of Goods, method of payment, contract type, Port of discharge and expected dates of sailing and discharge).
"Seller" means AFFCO New Zealand Limited or any related company;
"Terms and Conditions of Contract" means:
(a) the terms and conditions herein set out ("the Standard Terms"); together with
(b) any applicable terms and conditions set out in:
a. The client account application form; and/or
b. The Purchase Order Confirmation; and or
c. In the case of the sale of hides and skins only, the International Contract No. 6 –Hides and Skins published by the International Council of Hides, Skins & Leather Traders Associations provided however that Clauses 10.3 and 23 of that Contract shall not apply.
3. **Communications between the parties**
3.1 Communication between the parties may be conducted by letter, facsimile or electronic transmission.
3.2 Subject to proof to the contrary, communications sent by facsimile or electronic transmission shall be deemed to have been received by the other party on the next business day after sending provided that the sending party can produce a transmission report showing successful transmission without error.
3.3 Execution of a facsimile or electronic copy of a document and transmission from one party by facsimile or electronic transmission to the other or their representative is intended to bind the first party and will constitute a binding offer and or acceptance and satisfy the requirements of Sections 9 to 27 of the Property Law Act 2007 and of the Electronic Transactions Act 2002.
4. **Formation of Contract**
4.1 A contract for the supply of Goods shall not be formed until the Seller has sent to the Buyer a Purchase Order Confirmation and the Buyer has acknowledged receipt (which may be either by a Document or by an act, such as payment of a deposit) without any attempt in the acknowledgment to change or amend the terms of the contract.
4.2 Any Document sent by the Seller or any agent of the Seller to the Buyer prior to the Purchase Order Confirmation shall not be binding on the Seller.
4.3 Where the Purchase Order Confirmation specifies a delivery date or dates, this is an estimate only. Time is not of the essence unless expressly stated in the Purchase Order Confirmation.
5. **Variation**
No instruction, stipulation, condition or variation to the Terms and Conditions of Contract shall have any force or effect unless agreed to in writing by the Seller and the Buyer.
6. **Conflicting Terms**
Where any conflict exists between the Standard Terms and or terms and conditions in the client account application form and or in the Purchase Order Confirmation and or in the International Contract No. 6 – Hides and Skins:
6.1 The terms and conditions in the Purchase Order Confirmation shall prevail over any other conflicting terms and conditions but only in respect of the order to which it relates;
6.2 The terms and conditions in the client account application form shall prevail over any other conflicting terms and conditions in the Standard Terms or in the International Contract No. 6 –Hides and Skins; and
6.3 The Standard Terms shall prevail over any other conflicting terms and conditions in the International Contract No. 6 –Hides and Skins.
7. **Basis of Sale**
Goods may be sold free on board ("FOB"); costs, insurance and freight ("CIF"); costs and freight ("CFR"), each as defined in Incoterms 2000 edition or on any other terms defined in Incoterms; or on such other basis, as may be agreed between the Seller and the Buyer at time of formation of the contract for the supply of Goods.
Where goods are sold FOB, the risk of loss or damage to the goods is transferred to the Buyer when the goods pass the ship's rail (i.e. off the dock and placed on the ship). The Buyer takes sole responsibility for the entry of the goods into the destined port/country and the Seller shall have no liability should the goods not be cleared by the relevant authorities for entry into the destined port/country.
8. **Price**
Unless otherwise stated in the Purchase Order Confirmation or implied by the Basis of Sale, the price does not include any applicable taxes, duties, freight and insurance.
9. **Payment**
9.1 Payment of the Price will be made in accordance with agreed payment terms as noted on the client account application form signed by the Buyer and/or the Purchase Order Confirmation sent to the Buyer.
9.2 The Buyer shall not, for any reason, withhold payment nor make any deduction or set off.
9.3 If no other payment terms are agreed then payment is to be 100% of invoice value prior to dispatch to the load Port.
9.4 Unless otherwise agreed in writing, all payments are to be by wire /SWIFT transfer in cleared funds to the Seller's nominated account and are not deemed to have been made until the Vendor has received notice of receipt from its Bank.
10. **Installment shipments**
Goods may be shipped in installments on separate vessels, and in any such case each such shipment shall be regarded as a separate contract and payment made accordingly. The failure to make any shipments shall not vitiate any contract as to other shipments.
11. **Regulatory compliance**
Goods shall as at the date of shipment have been manufactured, processed and packed to the standard required by the health and agriculture authorities in the country at which the Goods are to be discharged from the vessel shipping the same.
12. **Samples and quantity**
Notwithstanding the prior submission of samples by the Seller to the Buyer, Goods are supplied solely as described in the Seller's invoice, and the bill of lading or airway bill shall be conclusive evidence as at the date of shipment of the weight or quantity of the Goods.
13. **Title**
No property in the Goods shall pass to the Buyer until payment in full is made to the Seller. The Seller reserves all rights and remedies it may have under applicable law to recover the Goods sold and or delivered to the Buyer if the Buyer does not pay for such Goods by the payment due date. This includes the right to divert Goods on the water, or to enter upon the Buyer or other's premises and remove such Goods. Such rights are cumulative and not in substitution for any other rights that the Buyer may have in the circumstances.
14. **Limits of Seller's liability**
The Seller shall not be liable for any act or omissions whether by reason of negligence or otherwise in breach of the Terms and Conditions of Contract unless such breach is notified by the Buyer to the Seller in accordance with the Seller's claims procedure and the Seller's liability including but not limited to consequential, special or aggravated loss shall not in any event whatsoever exceed the invoiced price for the Goods in respect of which the breach is notified.
15. **Default by Buyer**
15.1 Should the Buyer, fail to tender due and punctual payment of the Price, or advise the Seller that the Buyer is unable or unlikely to be able to make due and punctual payment of the Price by the due date, or advise the Seller that the Buyer does not intend to tender due and punctual payment of the Price, the Seller may forthwith, and without prejudice to any other rights and remedies it may have, exercise any one or more of the following rights. The Seller may:
(a) retain any documents of title to the Goods, and for avoidance of doubt it is agreed that the Seller shall not be required to release documents of title to the Goods until such time as payment in full of the Price has been made;
(b) give the Buyer notice in writing terminating the contract and claim damages from the Buyer for all losses suffered by and costs incurred by the Seller as a result of the termination including, without limitation, packaging and re-packaging costs, storage and or demurrage costs, export or other taxes and duties, freight costs, financing costs, loss of profits and any diminution in the value of the Goods due to price movements;
(c) re-sell the Goods;
(d) divert the Goods (at sea or on shore);
(e) enter upon the premises where the Goods or any part thereof are situated and take possession and remove the same without being responsible for any damage caused thereby.
15.2 If the Buyer commits any act of bankruptcy or, being an incorporated company, passes a resolution for winding up (except for the purposes of reconstruction), or a court makes a winding up order or a petition is filed in any court for winding up the Buyer, or the Buyer enters into any compromise or arrangement with creditors, the Seller shall have the right to cancel the contract in whole or in part without liability on the part of the Seller, and to claim in the bankruptcy or liquidation for costs and expenses incurred in any loss of resale.
15.3 If the event that the Seller is eligible to exercise any remedy pursuant to this clause in respect of any contract between the Seller and the Buyer then the Seller shall be able to exercise the same remedies in respect of any other uncompleted contract then in existence between the Seller and the Buyer.
16. **Claims**
16.1 In the event of any claims by the Buyer alleging breach of the Terms and Conditions of Contract in respect of quality or quantity of the Goods, or other pre-shipment obligations on the part of the Seller, the Buyer is required to follow immediately the claims procedures as laid down and advised by the Seller to the Buyer from time to time.
16.2 Where the contract for supply of Goods is a contract for the supply of boneless beef to a Buyer in the United States of America or Canada, fat claims will be settled in accordance with the Meat Importers Council of America Inc's current guidelines for the settlement of fat claims.
16.3 Where all or part of a shipment of Goods to a Buyer in the United States of America is rejected at port of entry by United States Department of Agriculture ("USDA") subsequent to the payment by the Buyer to the Seller of the Price, the Seller on receipt of the USDA rejection certificate shall refund to the Buyer the Price, or part thereof, in respect of the Goods rejected, and such payment shall be a full and final settlement of any liability the Seller has to the Buyer, provided however that the Seller shall not be obliged to make such a payment where the Goods have been used by the Buyer or where the Goods have not been kept at the Seller's recommended temperature. Property and risk in the Goods shall revert to the Seller on refund of the price.
17. **Credit Limits**
If the Buyer's account in respect of Goods ordered from the Seller exceeds the credit limit set solely at the discretion of the Seller, the Seller shall have the right as its option to cancel the contract in whole or in part without liability on the part of the Seller.
18. **Force Majeure**
Notwithstanding any agreement as to the date of shipment, it is agreed that shipment may be suspended in whole or in part from time to time in case of fire, accident, earthquake, flood, drought, crime, war, blockade, civil commotion, epidemic, strike, lockout or labour dispute (whether or not as the Seller's works), shortage of fuel, power or raw material, inability to procure stock, inability to obtain transport, rejection by regulatory authorities in country of destination, or any other event beyond the control of the Seller, and such suspension shall not entitle the Buyer to cancel shipments under the Conditions of Contract. If shipment is delayed by anything or any event as aforesaid for more than 30 days, the Seller may at its option by notice to the Buyer rescind the contract in which case the Buyer shall have no claim of any nature or kind against the Seller.
19. **Waiver**
19.1 No failure by the Seller to insist upon strict performance of the contract, including any of the Terms and Conditions of Contract, or any delay in exercising any of its rights or remedies, constitutes a waiver or variation unless expressly agreed to in writing by the Seller.
19.2 Any written waiver or variation agreed to by the Seller shall apply only to the specific contract to which it relates, shall apply strictly in accordance with its terms, and shall not give rise to any other implied waiver or variation or expectation of other waiver or variation.
20. **Assignment**
Any assignment of the Buyer's rights and obligations under any contract between the Buyer and the Seller shall not release the Buyer from its obligations under the contract, the Buyer remaining personally liable to perform the same, unless the Seller has consented in writing to the assignment; there being no obligation to give such consent.
21. **Applicable law**
This contract shall be construed and take effect according to the laws of New Zealand and the parties submit to the jurisdiction of New Zealand Courts and of Arbitrators acting within New Zealand.
22. **Exclusion of Vienna convention**
The parties agree that notwithstanding the domicile of the Seller and or the Buyer and or the applicable laws applying to the contract the Buyer and the Seller expressly agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) ("the Vienna Convention") shall not apply and no terms or conditions shall be implied into the contract by virtue of the Vienna Convention.
23. **Consumer Guarantees Act**
The Buyer represents that it is acquiring the Goods for the purposes of a business and accordingly the Consumer Guarantees Act 1993 shall not apply.
24. **Arbitration**
Although New Zealand Courts shall have jurisdiction, at the option of the Seller (Affco) all differences which may arise between the parties arising out of or in relation to this contract or its performance may be referred to arbitration in Hamilton, New Zealand, unless the parties otherwise agree in writing to a different location. The appointment of arbitrators and process of arbitration shall be conducted in accordance with the Arbitration Act 1996 or any amendments thereof.
25. **Validity**
In the event that any clause of the terms and Conditions of Contract is invalid or unenforceable under the laws of the relevant jurisdiction, that clause will be amended, but only to the extent necessary to make it valid and enforceable under those laws. If amendment is not possible, that clause will be stricken from the Terms and Conditions of Contract, however the balance of the Terms and Conditions of Contract will continue in full force and effects.
26. **Variation of Standard Terms**
The Seller reserves the right to change any of the Standard Terms. The Seller will notify the Buyer of any such changes and the Buyer agrees that notification that there has been a change to the Standard Terms may be undertaken by notifying the Buyer of the fact of change and that the amended Standard Terms may be viewed on the Seller's website. The Buyer agrees that upon notification of a change the Buyer shall be deemed to have read and agreed to the amended Standard Terms in respect of any subsequent contract entered into between the parties.