

# AFFCO EUROPE TERMS AND CONDITIONS OF TRADE 03/03/2009



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 of 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.  
"Sales Confirmation" means a document headed "Sales Confirmation" directed by the Seller to the Buyer confirming:
  - i. 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
  - ii. 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 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 Europe Limited and/or any related company whether in the United Kingdom, New Zealand or elsewhere.  
"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 the credit account application form, and/or the Sales Confirmation form, and/or the Sales Invoice.
3. **Communications between the Parties**  
Communication between the parties may be conducted by letter, facsimile or electronic transmission. Subject to proof to the contrary, communications sent by such means 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.
4. **Formation of Contract**  
Unless otherwise agreed in writing, a contract for the supply of Goods shall not be formed until the Seller has sent to the Buyer a Sales Confirmation. Where the Sales Confirmation specifies a delivery date or dates, this is an estimate only. Time is not of the essence unless expressly stated in the Sales Confirmation.
5. **Variation**  
No instruction, stipulation, condition or variation to these Terms and Conditions of Contract shall have any force or effect unless agreed to in writing by the Seller and the Buyer. The Seller however reserves the right to change its standard Terms and Conditions in the future at which point the Seller will notify the Buyer of any such changes when the Buyer will be deemed to have accepted such new standard Terms and Conditions.
6. **Conflicting Terms**  
Where any conflict exists between the Standard Terms and or terms and conditions in the credit account application form and or in the Sales Confirmation: the terms and conditions in the Sales Confirmation shall prevail over any other conflicting terms and conditions but only in respect of the order to which it relates; the terms and conditions in the credit account application form shall prevail over any other conflicting terms and conditions in the Standard Terms.
7. **Entire Agreement**  
These Terms and Conditions contain the whole agreement between the Buyer and Seller and supersede and replace any prior written or oral agreements, representations or understandings between them. The Buyer confirms that it has not entered into the contract on the basis of any representation that is not expressly incorporated herein. Nothing in this Agreement excludes liability for fraud.
8. **Price**  
The price of the Goods shall be the price stated on the Sales Confirmation and / or the Sales Invoice. In the event of there being a difference between the two, that stated on the Sales Invoice prevails.
9. **Payment**  
Unless credit facilities have been previously agreed in writing, payment is to be 100% of invoice value and is to be made prior to delivery and the Buyer shall not, for any reason, withhold payment nor make any deduction or set off. Unless otherwise agreed in writing, all payments are to be by BACS/ electronic bank transfer in cleared funds to the Seller's nominated account and are not deemed to have been made until the Seller has received notice of receipt from its Bank.
10. **Instalment Shipments**  
Goods may be shipped in instalments, 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. If the Buyer fails to pay for any one or more of the said instalments of deliveries of the Goods, the Seller may, at its sole option, be entitled to suspend without notice to the Buyer further deliveries of the Goods pending payment by the Buyer and/or to treat the Contract/s as repudiated by the Buyer.
11. **Agency, Partnership, etc.**  
The contract between the Seller and Buyer shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between them other than the contractual relationship expressly provided for herein. Neither the Seller nor the Buyer shall have, nor represent that it has, any authority to make any commitments on the other's behalf.
12. **Risk**  
The risk in the Goods shall pass to the Buyer on delivery or when the Buyer shall be responsible to insure the Goods, whichever is the earlier.
13. **Samples and quantity**  
Notwithstanding any prior submission of samples by the Seller to the Buyer, Goods are supplied solely as described in the Seller's Sales Confirmation.
14. **Title**
  - a. Notwithstanding delivery of the Goods and the passing of insurance risk and granting of credit, the title in the Goods (both legal and equitable) shall remain with the Seller and shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full in respect of all Goods delivered under the contract or until the Goods are processed or resold (whichever shall occur first) and until such time as the property in the Goods delivered passes to the Buyer hereunder the Buyer shall hold it in a fiduciary capacity for the Seller.
  - b. Until such time as legal and equitable title in the Goods delivered passes to the Buyer:
    - i. The Buyer shall keep the Goods delivered in such condition and stored and labelled in such manner as to make it clearly identifiable as the Seller's property.
    - ii. The Buyer shall ensure that the Goods are stored at a maximum temperature of 0 degrees C for chilled fresh Goods and minus 1.7 degrees C for frozen goods.
    - iii. The Buyer shall be entitled to process or use the Goods delivered in the ordinary course of its business but shall account to the Seller for such proportionate amount of the proceeds of resale of the Goods as delivered or processed (including proceeds of insurance claims on loss, damage or destruction) as is equivalent to the sale price (or proportionate amount thereof) due to the Seller and shall hold such proceeds on trust for the Seller and not mix the same with other monies or pay them into any overdrawn bank account and shall ensure that they are at all times identifiable as the Seller's monies and in the case of tangible proceeds keep them properly stored, protected and insured.
    - iv. At any time until the Goods delivered has been paid for and without prejudice to any other remedies available to the Seller, the Seller or its agents shall be entitled immediately after giving notice of its intentions to do so to enter upon the premises of the Buyer with such transport as may be necessary and re-possess any Goods to which it has title hereunder.
    - v. If requested so to do by the Seller, the Buyer shall assign to the Seller any right or claim of the Seller over or against any third party in respect of the Goods delivered.
    - vi. Nothing in this clause shall confer any right on the Buyer to return the meat delivered under the contract or to refuse or delay payment therefor, unless otherwise agreed in writing.
15. **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. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly.
16. **Default by Buyer and Termination**  
Should the Buyer fail 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:
  - i. retain any documents of title to the Goods;
  - ii. give the Buyer notice in writing terminating the contract;
  - iii. re-sell the Goods;
  - iv. 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.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, 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.  
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.
17. **Claims**  
No claim will be entertained by the Seller and the Seller shall be under no liability whatsoever by reason of this Contract or the supply of the Goods unless notification of the claim is received by the Seller by telephone within 48 hours of the actual time of delivery and also in writing within seven days of the date of delivery and a minimum of two-thirds of the Goods in respect of which the claim is made is immediately available for inspection by the Seller at a place where the Seller may reasonably choose.
18. **Credit Limits**  
If the Buyer's account in respect of Goods ordered from the Seller exceeds the credit limit and/or credit terms 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.
19. **Force Majeure**  
Notwithstanding any agreement as to the date of delivery, it is agreed that delivery 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 deliveries under the Conditions of Contract. If delivery 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.
20. **Waiver**  
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. 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.
21. **Validity and Severance**  
If any provision herein is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the contract and rendered ineffective as far as possible without modifying the remaining provisions herein and shall not in any way affect any other circumstances of or the validity or enforcement of the contract.
22. **Applicable Law**  
This contract shall be construed and take effect according to the laws of England and the parties submit to the non-exclusive jurisdiction of English Courts and of Arbitrators acting within England.
23. **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.
24. **Arbitration**  
All differences which may arise between the parties arising out of or in relation to this contract or its performance, in the case of a sale of Goods for delivery outside the United Kingdom shall be and otherwise at the option of the Seller may be, referred to arbitration in England. The appointment of arbitrators and process of arbitration shall be conducted in accordance with the Arbitration Act 1996 or any amendments thereof.