



TERMS AND CONDITIONS OF BUSINESS

1. DEFINITIONS

1.1 In these terms and conditions:

"Acknowledgement of Order" shall mean the written acceptance of an Order by the Seller;

"Birds", shall be any member of the avian species (excluding game birds of any type) supplied by the Seller to the Customer;

"Business Day" means between the hours of 8.00 am and 4.00 pm on a day between Monday and Friday not being a Bank Holiday in England and Wales.

"Contract Price" shall mean the price of the Birds invoiced by the Seller in accordance with clause 3 of these terms and conditions;

"Customer" shall mean the other party to this contract;

"Deposit" shall mean a deposit of between 5-20% of the Contract Price which may be charged by the Seller (at its sole discretion) to confirm an Order. (For the avoidance of doubt, should a Deposit not be required, this does not affect the validity of any Order which shall be accepted or deemed accepted in accordance with these terms.)

"Order" shall mean the Customer's order for the Birds as set out in the Customer's purchase order form, the Customer's written acceptance of the Seller's quotation, or overleaf, as the case may be.

"Performance" shall mean 20% under the bodyweight or evenness guidelines as set out in the Genetics Breeds Specification as published from time to time.

"Seller" shall mean Wot a Pullet and Summerbridge Rearing, trading names of Noble Foods Ltd., a Company registered in England and Wales with Company number 3636168 whose registered office is at Waterfront Bdg, 5 Lotus Park, The Causeway, Staines-Upon-Thames, TW18 3AG;

1.2 A quotation for the Birds given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days.

1.3 An Order shall only be accepted (or deemed to be accepted) when the Seller issues a written Acknowledgement of Order and any Deposit demanded by the Seller is paid by the Customer in full;

1.4 Any alterations made to an Order after an Acknowledgement of Order has been given shall be made at the sole cost of the Customer, and accepted at the Seller's sole discretion. Furthermore, the Seller shall be entitled to charge for reasonable administration expenses.

1.5 Any reference to the age of the Birds in weeks shall be construed as that week commencing on a Monday following the date of hatch and ending on the Sunday.

1.6 Any reference to writing or written shall include fax or email.





2. APPLICATION

2.1 The Birds supplied by the Seller are supplied subject to these terms and conditions unless they are varied by an agreement in writing between the authorised representatives of the Seller and the Customer.

2.2 The Seller's employees or agents are not authorised to make any representations concerning the Birds unless confirmed by the Seller in writing. In entering into the contract the Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

2.3 The Seller may, entirely at its own discretion, provide to the Customer, at no additional cost (and without any liability) advice on the management, performance and other aspects of good husbandry in respect of the Birds. This may include any manuals or handbooks issued by the Seller.

2.4 Notwithstanding clause 2.3 above, the Customer acknowledges and agrees that any information given to it or its employees or agents by the Seller or the Seller's authorised representatives is general advice only and the Customer accepts that it is entirely responsible for satisfying itself that the Birds are fit for the intended use either by relying on its own expertise or by obtaining professional advice and any advice supplied by the Seller in any form whatsoever which is followed or acted upon by the Customer shall (to the extent permitted by law) be entirely at the Customer's own risk, and accordingly the Seller shall not be liable for any loss however so arising from the Customer's reliance on such advice or recommendation.

2.5 The Birds shall be vaccinated and reared in accordance with the standard health plan of the Seller from time to time unless the Customer has advised the Seller in writing of any variation to this plan no later than 2 weeks prior to the delivery of the Chicks.

2.6 Should any additional or optional vaccinations be requested by the Customer, the Customer shall notify the Seller, and in the case of optional vaccinations, provide specific details of such vaccinations no later than 2 weeks prior to the delivery date of the Chicks.

3. PRICES

3.1 The price payable for the Birds shall be the Contract Price plus any adjustment necessary to take account of any increase in costs incurred by the Seller prior to the date of despatch. Delivery charges and other expenses incurred by the Seller may be added to the invoice, together with the addition of VAT.

3.2 On any Orders over 500 Birds, the Seller shall provide the Customer 0.2% additional pullets (rounded down to the nearest 500) free of charge.

3.3 Split deliveries as to time or destination are liable to surcharge.

3.4 Value Added Tax will be charged at the applicable rate at the date of supply.





4. CANCELLATIONS AND POSTPONEMENTS

4.1 If cancellation or postponement of the Customer's Order is made no later than 56 days prior to the date of delivery of chicks as set out in the Acknowledgement of Order, the Customer shall pay to the Seller 90% of the Contract Price.

4.2 If cancellation or postponement of the Customer's Order is made no later than 26 days prior to the date of delivery of chicks as set out in the Acknowledgement of Order, the Customer shall pay to the Seller the Contract Price.

4.3 Notwithstanding clauses 4.1 and 4.2 above, the Seller shall make reasonable endeavours to resell the Birds and if the Seller is able to resell any of the Birds allocated to the Order on similar terms to that of the Customer's original Order, then the Seller may, at its sole discretion, credit the Customer with a sum equal to the net proceeds of such re-sale (after deduction of the Seller's costs and expenses incurred).

5. INSPECTION

5.1 The Customer has the right to inspect the Birds (other than day old birds) on 72 hours prior notice of inspection and prior to delivery, PROVIDED THAT the Customer has not had contact with poultry for 72 hours prior to the inspection.

5.2 Any inspection shall be carried out by the Customer between the hours of 8am and 4pm on a Business Day.

5.3 Subject always to clause 5.4, if, after inspection of the Birds by the Customer, the Customer wishes to cancel the Order on health and Performance grounds of the Birds, the Customer may do so within 48 hours of the inspection.

5.4 If the Customer would like to cancel an Order after an inspection has taken place, the Seller shall first be entitled to request an independent review of the Birds by a third party at the Customer's sole cost. Both the Customer and the Seller shall use reasonable endeavours to appoint a joint independent expert to conduct the inspection, and in the absence of agreement on the identity of the joint expert within 5 Business Days, the Seller shall be entitled to appoint its own independent expert at the Customer's sole cost. The determination of the independent expert appointed pursuant to this clause 5.4 shall be final and binding in the absence of manifest error of fraud. If the independent expert determines that there were no health and Performance grounds which entitle the Customer to cancel the Order, the Customer shall remain liable for the entire cost of the Order.

5.5 Should the Birds not meet the Performance grounds for reasons outside the Seller's control, the Customer shall allow the Seller reasonable time to rectify the position before a cancellation of an Order can occur. Such measures taken by the Seller shall be made at the Seller's sole cost.



6. TRANSIT

6.1 If the Seller is satisfied (at its entire discretion) that any Birds contained in an Order died in transit, then on:

6.1.1 notification to the Seller as soon as practicable; and

6.1.2 production of written confirmation of a veterinary surgeon after a post mortem examination has taken place which concludes that the death of the Bird(s) was caused by a condition present at the date of delivery; and;

6.1.3 samples from the same consignment of birds are made available for testing by the Seller; the Seller shall refund the cost of such Birds as soon as practicable to the Customer to the extent that such losses are not recoverable under a policy of insurance which the Customer has in place.

7. DELIVERY

7.1 The Seller shall deliver the Birds to the Customer's premises or the address as stated in the Acknowledgement of Order.

7.2 Any date of delivery or period for delivery given is an estimate only and the Seller will not be liable for any delay in delivery of the Birds. For the avoidance of doubt, time of delivery shall not be of the essence.

7.3. If the Customer fails to collect the Birds (in the case of collection Orders only) or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason or any cause beyond the Customer'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 make provision for the storage of the Birds until actual delivery (or collection if a collection Order), and the Customer shall be responsible and shall indemnify the Seller for the reasonable costs, including insurance, of such storage.

7.4 If delivery by the Seller is delayed or prevented by an occurrence outside of the Seller's reasonable control, including but not limited to avian influenza of the Birds, disease, war, fire, act of God, industrial action, failure of any third party supplier to deliver eggs, birds or other products to the Company or any other event a "Force Majeure Event", the Seller shall not be liable to the Customer for any loss arising as a result of such event(s) and shall give notice to cancel an Order to the Customer as soon as reasonably practicable if it becomes aware that it shall not, in its reasonable opinion be able to perform its obligations under an Order due to the occurrence of a Force Majeure Event.

7.5 The Customer may only refuse to take delivery of Birds which are suffering from disease which renders them unfit for the purpose for which they were supplied (and which was made known to the Seller prior to the Order) or which differ in material degree from those ordered as a result of such disease, provided that the Customer:

7.5.1 notifies the carrier at the time of delivery; and

7.5.2 notifies the Seller immediately by telephone of the number of Birds he refuses to accept delivery of and the reason(s) for such refusal and confirms such notification to the Seller in writing within 48 hours of the time of delivery.

7.6 The Customer shall only be permitted to reject those Birds which are afflicted and shall not be entitled to reject any further Birds from the same delivery or Order.

7.7 If the Seller is satisfied that the Customer was justified in his refusal to take delivery of the afflicted Birds, the Seller shall within a reasonable time credit the Customer the price of the afflicted Birds.

7.8 If the Customer seeks to reject the Birds in the case of avian influenza or restrictions upon movements of the afflicted Birds or any one of them, the Customer shall continue to be liable for the Contract Price. The Seller will make reasonable efforts to resell such Birds and repay any sums recovered to the Customer as soon as practicable.



8. TITLE AND RISK

8.1 Risk in the Birds shall pass to the Customer on delivery and the Customer shall not be entitled to reject or return the Birds except as specifically provided elsewhere in these terms and conditions.

8.2 Notwithstanding clause 8.1 above, the Birds shall remain the sole and absolute property of the Seller until the Seller has received full and cleared payment for the Birds and payment has been received by the Seller of all other sums (if any) which are due to the Seller from the Customer.

8.3 The Customer acknowledges that until such a time as the Seller receives full payment for the Birds (at which point the Customer becomes the owner of the Birds):

(a) the Customer is in possession of the Birds solely as fiduciary agent and bailee for the Seller and the Customer will house, feed and nourish, protect, obtain veterinary attention (if required and at the Customer's sole cost) and insure the Birds on behalf of the Seller and to their full price against all risks and keep them separately from its own birds or those of any other person and in a manner which makes them readily identifiable as the Birds of the Seller;

(b) the Customer is licensed to re-sell or use the Birds in the ordinary course of its business PROVIDED THAT any sale of the Birds shall take place as bailee for the Seller and that the entire proceeds of sale are held in trust for the Seller and are kept separate from other monies and not paid into any overdrawn bank account; and

(c) the Customer's right to possession of the Birds shall cease if the provisions of clause 10 shall apply to the Customer

8.4 If payment for the Birds is overdue in whole or in part the Seller may, without prejudice to any other rights and remedies, recover and/or sell the Birds or part thereof and shall be entitled to enter upon the Customer's premises or site for that purpose.

9. PAYMENT

9.1 The Seller shall be entitled to invoice the Customer on or at any time after delivery.

9.2 The Customer shall pay invoices in full and in cleared funds within 14 days of the date of the invoice notwithstanding that delivery or collection of the Birds may not have taken place or that property in any Birds had not passed to the Customer.

9.3 Should full payment not be received by the Seller on the terms as set out in this clause 9, the Seller shall be entitled to charge interest on the overdue amount at the rate of at 7.5% above the Bank of England Base rate from time to time. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. Furthermore, if the Customer has received a discount on the Contract Price, this shall be disapplied if payment is not received on time in accordance with clause

9.2 above, and interest shall also accrue on such sums.

9.4 The Seller shall be under no obligation to make any delivery if the Customer is in breach of any of these terms and conditions.

9.5 The Seller shall at any time be entitled to deduct from or set off against monies payable by it to the Customer such sums which the Customer owes the Seller.

9.6 The Customer shall not at any time be entitled to deduct or to set off any payment due to the Seller.

9.7 Non-payment on a due date will entitle the Company to demand payment of all outstanding balances under this Contract or any other contract between the Seller and the Customer whether due or not and/or cancel any outstanding orders without prejudice to any other rights it may have.



10. DEFAULT OR INSOLVENCY OF CUSTOMER

10.1 This clause applies if:

10.1.1 the Customer is in breach of any of its obligations under these Terms and Conditions; or

10.1.2 the Customer has a receiving order in bankruptcy made against him or makes any arrangement with his creditors or, being a Company, has a receiver, liquidator, administrator, supervisor or administrative receiver appointed over its property or assets or any part of them or if any order shall be made or any resolution passed for winding up the Customer; or

10.1.3 the Customer ceases, or threatens to cease, to carry on business; or

10.1.4 the Seller reasonably considers that any of the events mentioned above will occur.

10.2 If this clause 10 applies then the Seller may, without prejudice to its other rights or remedies accruing before or after cancellation, demand immediate payment by the Customer of all unpaid accounts and suspend further deliveries and cancel this and any other contract between the Seller and the Customer without any liability attaching to the Seller in respect of such suspension or cancellation and debit the Customer with any loss sustained by the Seller.

11. EXCLUSION OF LIABILITY

11.1 Except for any liability which it may incur for death or personal injury to humans resulting from the Seller's negligence, the Seller shall not be liable in any way whatsoever whether in contract, in tort, in misrepresentation or otherwise for any consequential or other loss, damage or injury, however caused which may arise out of or in connection with the supply of the Birds.

11.2 Subject to the provisions of clause 11.1, the Seller's liability under these terms and conditions shall be limited to the Contract Price.

11.3 The Customer hereby agrees that it shall not be entitled to bring any claim against the Seller arising as a result of, or relating to the quality or condition of the Birds supplied by the Seller unless before disposal or slaughter of the Birds, or any of them, the Seller has been granted access and permitted to inspect and take samples as it deems necessary of:

11.3.1 the Customer's premises where the Birds were held;

11.3.2 the Birds the subject of the relevant claim; and

11.3.3 any other animal kept where the Birds were held.

11.4 For the avoidance of doubt, the Seller shall be entitled to obtain access and take copies of all test and sample results obtained by the Customer in relation to those matters set out in clauses 11.3.1-11.3.3 inclusive.

11.5 Any such inspections carried out in accordance with this clause 11 shall be carried out during business hours on reasonable notice to the Customer, except in the event of emergency, where the Customer shall grant immediate access to the Seller.





12. RESERVATIONS

12.1 The Seller reserves the right to vary deliveries and to make deliveries by instalments as it may deem necessary having regard to availability of supplies.

12.2 Each Order made by the Customer shall constitute a separate contract to which these terms and conditions shall be applied.

13. LEGAL

13.1 The Customer agrees that no oral representations have induced it to enter into the contract or form any part thereof. Furthermore, the conditions of the Customer's purchase order (if any) shall not form part of the Contract between the Customer and Seller unless expressly agreed by the Seller in writing.

13.2 This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by the Law of England and Wales and the Customer hereby agrees to submit to the exclusive jurisdiction of the Courts in England and Wales to which all disputes however so arising shall be referred.

13.3 The Seller shall not be in breach of contract if the performance of the contract is delayed or otherwise affected by circumstances beyond the reasonable control of the Seller. In particular, no liability shall rest with the Seller in respect of any late deliveries or failure to deliver arising from shortage of supplies or transportation delays beyond its control.

13.4 No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract.

14. INVOICING

The Seller has the right to invoice the Customer by e-mail, post or by hand. Where invoices are sent out using electronic mail they will be deemed to have been received by the Customer on the date when they are sent provided that the electronic mail is transmitted on a Business Day. If the mail is sent to the Customer outside of these times then the Customer will be deemed to have received the invoice on the next Business Day following transmission. Invoices delivered by post are deemed to be received on the second Business Day following delivery and invoices submitted by hand are deemed delivered immediately.

