

CEDAR MEATS (AUST) PTY LTD ACN 007149 402 TERMS & CONDITIONS OF SALE

DEFINITIONS

"**Agreement**" means the agreement resulting from the acceptance by the Seller of an Order on these Terms and incorporates the current price list of the Seller (if any), the information on the face of any invoice and any variations agreed to in writing by the parties.

"**Australian Consumer Law**" means the law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any corresponding provisions of state or territory fair trading legislation.

"**Buyer**" means any person, firm, corporation or entity, which purchases or orders Goods from the Seller.

"**Delivery Costs**" means all costs of transport and delivery including but not limited to all costs of freight, shipping, marine insurance, customs clearance, duties and taxes where applicable.

"**Event of Default**" means:

- (a) where any payment under this Agreement has not been made in full by the Buyer by the due date in accordance with the terms of payment under these Terms; or
- (b) where the Buyer is Insolvent.

"**Goods**" means all meat goods (and any associated products) supplied and all services rendered by the Seller to the Buyer pursuant to an Order.

"**GST**" means the tax created by A New Tax System (Goods and Services Tax) Act 1999 and its associated legislation.

"**Insolvent**" means:

(a) In the case of an individual, an application is made to a court for a sequestration order against that person or the person commits an act of bankruptcy or takes any steps to obtain protection or is granted protection from that person's creditors under any applicable legislation, or the person becomes a "bankrupt" within the meaning of the Bankruptcy Act 1966.

(b) A person or company enters into a composition, assignment or arrangement with creditors.

(c) In the case of a company, an application is made to a court for an order or an order is made that the company be wound up, an application is made to a court for an order appointing a provisional liquidator or receiver of the company, a meeting is convened to appoint an administrator of the company, an administrator is appointed to the company, the company calls a meeting for the purpose of appointing a liquidator or any of the events described in sections 459C(2)(a) to (f) or 585 of the Corporations Act 2001 (Cth) occurs in relation to the company.

"**Order**" means an order placed or request made by the Buyer to the Seller for Goods.

"**PPSA**" means the Personal Property Securities Act 2009 (Cth) and all terms which are both capitalized and italicized in these Terms have the meaning given to them in the PPSA.

"**Related Entity**" has the meaning given to it in the Corporations Act 2001 (Cth).

"**Seller**" means Cedar Meats (Aust) Pty Ltd ACN 007 149 402 of 690 Geelong Road, Brooklyn, Victoria 3012 Australia and includes its successors and assigns.

"**Terms**" means these Terms and Conditions of Sale.

1 GENERAL

- 1.1 An Agreement between the Buyer and the Seller may only be entered into upon, and subject to, these Terms and shall not be varied by any terms of the Buyer.
- 1.2 These Terms supersede and replace any previous terms of the Seller and apply to all Goods ordered after the Seller has provided the Buyer with a copy of these Terms.
- 1.3 An Agreement is deemed to have been entered into upon the communication, either written or verbal, by the Seller of its acceptance of an Order.
- 1.4 The Agreement contains the entire agreement of the parties relating to the purchase of Goods by the Buyer and cannot be altered or varied without the written agreement of the Seller.
- 1.5 The Buyer acknowledges that the Seller may amend these Terms at any time at its sole discretion and the Buyer is bound to comply with the amended terms with respect to any Agreement which comes into existence after the Buyer has received notice of the amended terms.

2 PRICE

- 2.1 Unless otherwise specifically stated, all prices and amounts listed by the Seller are exclusive of GST. The Buyer agrees to pay to the Seller the amount invoiced plus GST.
- 2.2 The Seller endeavours to provide accurate pricing for Goods. However, all prices quoted for Goods are subject to change without notice and prices in effect at the date of order will be invoiced.

3 TERMS OF PAYMENT

- 3.1 For all non-credit customers, payment must be made prior to the delivery of Goods or cash-on-delivery as agreed between the parties.
- 3.2 For credit customers, payment for Goods supplied is due seven (7) days' from the date of invoice.
- 3.3 The granting of credit to a Buyer shall be at the absolute discretion of the Seller.
- 3.4 The Buyer shall not be entitled to withhold any payments due to the Seller on any account.
- 3.5 If the Buyer fails to make payment for any reason, the Seller shall be entitled to:
 - (a) require cash payment before delivery of further Goods;
 - (b) charge interest at the rate of 4 percentage points higher than the per annum percentage rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) computed on the amount overdue, without prejudice to any other rights of the Seller;
 - (c) claim from the Buyer all losses, expenses, interest and costs including legal fees (on an indemnity basis) incurred by the Seller consequent upon the Buyer's failure to pay on the due date;
 - (d) cease any further deliveries to the Buyer and terminate any Agreement in relation to Goods that have not been delivered; and
 - (e) cancel or vary the credit limit set for the Buyer in respect of future sales.
- 3.6 The Terms continue to apply so long as any moneys remain owing by the Buyer to the Seller.
- 3.7 Payments made by credit card incur a 3% surcharge.

4 DELIVERY

- 4.1 Unless otherwise agreed in writing by the Buyer and Seller, the Seller is authorised to arrange delivery of Goods on behalf of the Buyer.
- 4.2 The Buyer acknowledges and agrees that all Delivery Costs shall be borne by the Buyer.
- 4.3 Unless the Delivery Costs are specifically included on the Seller's invoice, Delivery Costs shall be charged in addition to the price stated on the invoice and will in all circumstances be payable by the Buyer.
- 4.4 The Seller reserves the right to vary delivery dates in circumstances where delays have arisen through causes beyond the Seller's control and the Buyer agrees to accept delivery on revised delivery dates notified by the Seller as though such dates have been those originally agreed upon.
- 4.5 Goods ordered may be supplied ex-stock of the Seller but should the Seller be out of stock at the time required for delivery, any undelivered Goods shall be placed on back order and delivered when they become available.
- 4.6 Where Goods are transported by the Seller, the Seller's Related Entity or a third party, the Seller is deemed to maintain possession of the Goods until the Goods are delivered to the Buyer's premises.

5 RISK AND BUYER'S OBLIGATIONS UPON DELIVERY

Risk in Goods passes to the Buyer as soon as the Goods leave the Seller's premises. Upon delivery of the Goods at the Buyer's premises, the Buyer is responsible for immediately examining the Goods supplied and the Buyer must notify the Seller within twenty four (24) hours of delivery of any defect or query regarding the Goods. Such Goods subject to the Buyer's notice as specified in this condition shall be left intact and stored until the Seller (or a representative of the Seller) has had the opportunity to inspect the same. Any Goods not left intact shall constitute a deemed acceptance of those Goods by the Buyer and the Buyer shall have no claim in respect thereof howsoever arising against the Seller.

6 TITLE AND SECURITY INTEREST

- 6.1 All title, property and ownership in any Goods whensoever delivered does not pass to the Buyer until the Buyer has paid in full all monies owing to the Seller on any account.

- 6.2 Until title, property and ownership in the Goods passes to the Buyer in accordance with clause 6.1, the Buyer acknowledges and agrees that:

- (a) the Buyer grants the Seller a Security Interest in the Goods and any Proceeds that secures all monies howsoever owing or payable by the Buyer to the Seller;
 - (b) the Seller's Security Interest in the Goods and any Proceeds of the Goods is a Purchase Money Security Interest (or "PMSI") to the extent that it secures payment of any amounts owing in relation to the Goods;
 - (c) the Seller's Security Interest Attaches to the Goods and any Proceeds as soon as the Buyer attains possession of the Goods, or where the Buyer has arranged its own carrier to transport the Goods from the Seller's premises as soon as that carrier obtains possession of the Goods;
 - (d) the Seller may apply any monies received from the Buyer first to satisfy any portion of debt that is unsecured, second to satisfy any portion of debt that is secured but not by a PMSI and third to satisfy any portion of debt that is secured by a PMSI, or in any other manner the Seller sees fit;
 - (e) the Buyer will not grant or seek to grant any Security Interest in the Goods adverse to the interest of the Seller;
 - (f) the Buyer holds the Goods as fiduciary bailee and agent for the Seller and shall store the Goods separately from the Buyer's own goods or goods of any other person, in a manner which clearly renders them identifiable as the Goods of the Seller unless the Goods are otherwise on sold in the ordinary course of the Buyer's business;
 - (g) the Buyer and/or any administrator so appointed to the Buyer shall keep the Proceeds from the sale of the Goods separate and on trust for the Seller in a separate account which shall not be overdrawn. Interest attached to these proceeds of sale shall be paid by the Buyer into the separate account which shall not be overdrawn;
 - (h) the Goods will be kept in a healthy and proper condition (including by adequate freezing or refrigeration) by the Buyer until ownership of the Goods passes to the Buyer; and
 - (i) if the Buyer incorporates the Goods into new products, the Buyer acknowledges that it holds the Seller's interest in the new products on trust for the Seller and the Seller's Security Interest in the Goods extends to any accession to the fullest extent permitted by the PPSA.
- 6.3 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Seller's Security Interest, the Seller contracts out of all obligations to give notice and any restrictions on the Seller's rights to enforce its Security Interest to any and all extent provided under section 115 of the PPSA.
- 6.4 The Buyer agrees to provide all information and execute all documents necessary for the Seller to register and perfect its Security Interest in the Goods and Proceeds under the PPSA and to promptly inform the Seller in writing of any change of name of the Buyer or of any other change of details that appear on the Register and agrees that all fees in relation to registration including amendments to any registration are to be borne by the Buyer.
- 6.5 The Buyer waives its right to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
- 6.6 Where the Buyer suffers an Event of Default, the Seller shall have the right (without prejudice to any other rights and remedies it may have) to recover, detach, remove or otherwise retake possession of the Goods and to resell the Goods and the Seller, its employees, agents or contractors are hereby irrevocably authorized to enter any premises occupied by the Seller in which the Goods may from time to time be located without committing a trespass. The Buyer appoints the Seller as its agent to enter any premises not owned by the Buyer in which any of the Goods may be located from time to time. The Seller will have no obligation to make good any damage caused by such search, recovery, detachment or removal of Goods. The Buyer indemnifies and keeps the Seller indemnified from and against any costs, claims, damages or losses expended or suffered by the Seller in recovering the Goods (including legal costs on a full indemnity basis). Subject to clause 6.3, the Seller's rights under this clause 6.6 are in addition to and not in derogation from its rights under Chapter 4 of the PPSA, save to the extent that there is any inconsistency between the Seller's rights under this clause
- 6.6 and Chapter 4 of the PPSA, this clause 6.6 prevails.

7 WARRANTIES

- 7.1 Except as expressly provided to the contrary in these Terms, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise, relating in any way to the Goods or these Terms are excluded. Without limiting the generality of the preceding sentence, the Seller shall not be under any liability to the Buyer in respect of any loss or damage (including consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods or the failure or omission on the part of the Seller to comply with its obligations under these Terms.
- 7.2 Subject to clauses 7.3 and 7.4 of these Terms, the Buyer acknowledges that no warranties or representations are made whatsoever by the Seller as to the quality, nature or fitness for purpose of Goods, and the Buyer acknowledges that it has not relied on any such warranty or representation.
- 7.3 Nothing in these Terms shall be interpreted as excluding or restricting any legal liability of the Seller under Australian Consumer Law which cannot be lawfully excluded.
- 7.4 Where an Act of Parliament (including Australian Consumer Law) implies in this Agreement any terms, conditions or warranties and that Act avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in this agreement. However, the liability of the Seller for any breach of such term, condition or warranty shall be limited when permitted by law, at the option of the Seller, to any one or more of the following:
 - (a) the replacement of the Goods or the supply of equivalent Goods; or
 - (b) the payment of the cost of replacing such Goods or acquiring equivalent Goods; or where the Goods are services:
 - (c) the supply of the services again; or
 - (d) payment of the cost of having the services supplied again.

8 CANCELLATION OF ORDERS

The Buyer shall not cancel any Order received by the Seller without the consent of the Seller first being obtained. The Buyer acknowledges the perishable nature of the Goods and agrees that the Seller may in its absolute discretion refuse to accept a return of Goods.

9 TERMINATION

- 9.1 Without prejudice to any of its rights, powers or remedies the Seller may terminate an Agreement immediately without any liability to the Buyer if:
 - (a) any payment is not made by the due date or within the time specified in the Agreement; or
 - (b) the Buyer fails to comply with any of these Terms; or
 - (c) the Buyer becomes Insolvent.
- 9.2 Upon termination the Seller may suspend any further deliveries or immediately recover possession of any Goods not paid for in accordance with these Terms.

10 LEGAL CONSTRUCTION

- 10.1 These Terms are governed by and shall be construed in accordance with the laws of Victoria, Australia, and the Buyer and the Seller hereby subject themselves to the jurisdiction of the courts of that State. The laws of the Commonwealth of Australia govern any Security Interests under these Terms.
- 10.2 Any notice by one party to the other shall be sufficiently served personally or if posted by pre-paid post to the party to be served at the registered office of such party or its last known place of business.
- 10.3 There will be no waiver of the Seller's rights unless made in writing and signed by the Seller and any failure of the Seller to require performance or resort to legal remedy shall in no way affect the right of the Seller to later require strict performance or seek legal remedies.
- 10.4 If any of the Terms are void or unenforceable, it may be severed from others and the remaining Terms will continue to the extent permitted by law.