



Terms of Trade

Australian Wagyu Association (AWA)

1. Binding terms and conditions

The only terms which are binding upon AWA are those set out in these terms of trade or otherwise agreed to in writing by AWA and those, if any, which are imposed by law and which cannot be excluded.

PRICING AND PAYMENT

2. Quotations and price list

Any quotation or price list of AWA is not an offer to sell but is an invitation to treat only and AWA reserves the right to accept or reject in its absolute discretion any orders which may be received by it. AWA reserves the right to vary the prices charged from time to time without prior notification.

3. Goods and services tax

Unless GST is expressly included, the purchase price for any supply made under or in connection with these terms and conditions does not include GST in which case, the purchase price is increased by the GST payable and must be paid at the same time as payment is made for the goods sold under this agreement.

4. Payment terms

- (1) Subject to clause 19, the purchase price will be as specified in the quotation.
- (2) Unless otherwise stated in the quotation, if the purchase price:
 - (a) exceeds AUD 100,000, then the Purchaser must pay a deposit of 30% of the price of the goods and/or services within 30 days of the date of the order, a further 70% of the price on delivery; or
 - (b) does not exceed AUD 100,000, then the Purchaser must pay the purchase price within 30 days of the date of the invoice.

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- (3) If an invoice remains outstanding 60 days after the date of the invoice, AWA reserves the right to apply debtor administration fees to the outstanding debt.
- (4) If an invoice remains outstanding 90 days after the date of the invoice, AWA reserves the right to suspend the Purchaser's membership and account access until the outstanding invoice is paid by the purchaser.
- (5) The provision of credit to the Purchaser will be subject to the prior approval of, and on terms specified by, AWA in its absolute discretion.

5. Interest

AWA is entitled to charge the Purchaser interest at the rate which is equal to the base rate charged by AWA's bank plus 2% per annum on any unpaid amount payable under these terms and conditions on and from the date on which it was due to be paid.

6. Bank fees and charges

AWA reserves the right to the maximum extent permitted by law to charge all bank and other credit provider or facility fees and charges incurred by AWA in processing the Purchaser's payment, including (without limitation) by credit card or for dishonoured payment.

7. Debt collection fees

The Purchaser agrees to pay all costs incurred by AWA for the collection of any monies owing by the Purchaser to AWA which are not paid when due including, without limitation, commission charges by collection agencies, court filing fees and legal costs and disbursements (on an own solicitor/client indemnity basis) upon demand by AWA.

8. Credit application

AWA reserves the right to require the Purchaser to complete a credit application form prior to purchasing goods or services from AWA.

9. Refusal of credit

AWA will be entitled to refuse credit to a Purchaser at any time without any reason being given for its action at which time the Purchaser must pay for the goods or services in full at the time the order is placed with AWA. The goods or services will only be provided to the Purchaser after full payment has been received by AWA.

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10. Suspension of credit

AWA may at any time suspend credit to the Purchaser without any reason being given for its action at which time all monies then owing to AWA by the Purchaser will be repayable immediately.

11. Credit limit

AWA will be entitled to vary the limit of credit afforded to the Purchaser at any time and any credit sum then outstanding in excess of the Purchaser's credit limit will be repayable immediately.

ORDERING AND DELIVERY

12. Acceptance by AWA

All orders are subject to acceptance by AWA within 30 days of receipt of the Purchaser's order.

13. Cancellation of orders

Orders cannot be cancelled without AWA's written consent and then under terms that will indemnify AWA against any losses.

14. Supply and delivery

Unless otherwise specified in writing, supply of goods is at AWA's premises, and the cost of transportation of goods must be paid by the Purchaser.

15. Delivery charges where not at premises

Where a place of delivery of goods other than at AWA's premises is specified in writing, the Purchaser must pay the costs of transportation of the goods to the place of delivery at the same time as, and in addition to, the price.

16. Delivery date

Any specified delivery date is an estimate only. AWA is not liable for any delay in delivery.

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17. Storage of goods

Should storage by AWA of goods be necessary due to the Purchaser being unable to accept delivery on the agreed delivery date, payment of such goods stored will be payable by the Purchaser within 30 days of the original agreed date. The Purchaser will pay all reasonable storage and insurance charges in relation to goods/materials which are stored by AWA on the Purchaser's behalf.

18. Acceptance by Purchaser

The Purchaser must inspect any goods immediately upon delivery and must within 7 days give written notice to AWA of any claim that the goods are not in accordance with the contract. Otherwise, to the extent permitted by law, the goods must be treated as accepted by the Purchaser and the Purchaser must pay for the goods in accordance with these terms and conditions.

19. Variations to orders

19.1 If the Purchaser requires any variation to an order for any goods or services after acceptance it must notify AWA of the variation required but such variation will not be effective unless and until AWA and the Purchaser agree in writing as to the amount by which or manner in which the price is to be varied as a consequence.

19.2 AWA may make changes to its products and services, their delivery or packaging:

- (1) without notifying the Purchaser if the changes improved the product or service or do not substantially deviate from the original specifications for the product; or
- (2) in any other case, with the Purchaser's approval.

19.3 Any attempt by the Purchaser to unilaterally vary the content of an order or these terms of trade is void.

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RETURN OF GOODS

20. Terms applying to all returns

The Purchaser must not return any goods which the Purchaser claims are not in accordance with the contract (whether or not the goods are treated as accepted by the Purchaser) unless AWA has first given its written approval. Their return must then be with freight and cartage prepaid by the Purchaser.

21. Returns where goods accepted

Unless the Purchaser is a “consumer” for the purposes of the *Competition and Consumer Act 2010*, if AWA has given its written approval to the return of goods treated as accepted under clause 18:

- (1) credit will only be given for goods returned in a saleable condition; and
- (2) a handling charge equivalent to 25% of the price of the goods returned may be charged.

22. Returns where goods not accepted

If AWA has given its written approval to the return of goods which are not treated as accepted by the Purchaser under clause 18 AWA must refund the freight and cartage to the Purchaser if the Purchaser’s claim is found to be valid.

RISK AND TITLE

23. Risk and insurance

Goods supplied are at the Purchaser’s risk immediately on delivery to the Purchaser, into the Purchaser’s custody or to a storage location because the Purchaser is unable to take custody of the goods (whichever is the sooner). The Purchaser must insure the goods at its cost from delivery of the goods and when the goods are in storage, until they are paid for in full against such risks as it thinks appropriate (noting AWA’s interest on the policy) and produce a certificate to this effect to AWA on request.

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24. Retention of title

Regardless of delivery or possession, property in goods supplied does not pass to the Purchaser until the money owing for those goods, and any other money owing by the Purchaser to AWA, has been fully paid. The Purchaser in the meantime takes custody of the goods and retains them as AWA's fiduciary agent and bailee. The Purchaser and AWA agree that this retention of title clause constitutes a Security Interest and a Purchase Money Security Interest pursuant to the *Personal Properties Securities Act 2009 (PPSA)* and that the Security Interest applies in respect of the goods and also the proceeds from sale of the goods pursuant to other clauses of these terms and conditions.

25. Allocation of payments

Where the Purchaser does not make payment in respect of specific goods, payment must be treated as having been made first for goods which have passed out of the Purchaser's possession and then for whatever goods are still in the possession of the Purchaser as AWA elects.

26. Purchaser's obligations until paid for

Until goods have been paid for in full the Purchaser:

- (1) must properly store, protect and insure the goods, including storing them in a manner that shows clearly that they are the property of AWA;
- (2) may sell the goods, in the ordinary course of its business, but only as fiduciary agent of AWA. The Purchaser has no authority to bind AWA to any liability by contract or otherwise and must not purport to do so. The Purchaser receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the goods (including any proceeds from insurance claims) in trust for AWA and must keep the proceeds in a separate bank account until the liability to AWA is discharged; and
- (3) agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Purchaser as a result of the use, manufacture or resale of the goods.

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27. Reclaim possession if Insolvency Event occurs

AWA is entitled to reclaim possession of any goods, even if they have been paid for in full, in satisfaction of all debts owing to AWA for goods or services, if any of the following events occurs (**Insolvency Event**):

- (1) the Purchaser defaults under these terms or conditions;
- (2) the Purchaser commits an act of bankruptcy;
- (3) a receiver is appointed to the Purchaser;
- (4) the Purchaser goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
- (5) the Purchaser ceases to carry on business; or
- (6) the Purchaser enters into a scheme or compromises with its creditors; without prejudice to any other rights of AWA.

28. AWA's authority to inspect and reclaim

The Purchaser irrevocably authorises AWA at any time, to enter any premises:

- (1) upon which AWA's goods are stored to enable AWA:
 - (a) to inspect the goods; and/or
 - (b) if the Purchaser has breached the contract, or has committed an Insolvency Event, to reclaim possession of the goods; and
- (2) to inspect and copy the Purchaser's records pertaining to the goods.

29. Goods supplied on credit

Clauses 24 to 30 apply despite any arrangement between the parties under which AWA grants the Purchaser credit. Where AWA grants the Purchaser credit for a specific period the credit period is for that period or until the resale of the goods by the Purchaser.

30. Action before property passes

AWA may commence legal action against the Purchaser if the goods are not paid for within AWA's usual credit terms or any separate arrangement for credit made by AWA with the Purchaser although property in the goods has not passed to the Purchaser.

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GENERAL TERMS

31. Insolvency of Purchaser - when breach occurs

A breach of contract must be treated as having occurred if:

- (1) an application or order is made to or by a court or a resolution is passed for the winding up of the Purchaser or notice of intention to propose such a resolution is given; or
- (2) a controller (as defined in section 9 of the *Corporations Act 2001*) or an administrator under Part 5.3A of the *Corporations Act 2001* is appointed in respect of the Purchaser, or the whole or any part of its undertaking or property.

32. Application when credit arrangements

The provisions of clause 31 apply despite any arrangement between the parties under which AWA grants the Purchaser credit.

33. Conditions and warranties required to be binding

The only conditions and warranties which are binding on AWA in respect of:

- (1) the state, quality or condition of the goods supplied by it to the Purchaser; or
- (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Purchaser, including with regard to goods, their use and application;

are as set out in any written warranty provided by AWA to the Purchaser or those imposed and required to be binding by statute (including the *Competition and Consumer Act 2010*).

34. Limitation on liability

To the extent permitted by law, AWA's liability (if any) arising from the breach of the conditions or warranties referred to in clause 33 is, at AWA's option, limited to and completely discharged:

- (1) in the case of the goods, by either the supply by AWA of equivalent goods or the replacement of the goods supplied; and
- (2) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.

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35. Exclusion of other conditions and warranties

Except as provided in clauses 33 to 36 all conditions and warranties implied by law in respect of the state, quality or condition of the goods or services which may otherwise be binding on AWA are excluded.

36. Exclusion of consequential loss

Except to the extent provided in clauses 33 to 35, AWA has no liability (including liability in negligence) to any person for:

- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods or advice, recommendations, information or services; and
- (2) without limiting clause 36(1), any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the goods or advice, recommendations, information or services.

37. Indemnity

37.1 The Purchaser indemnifies AWA, regardless of any negligence of AWA, against:

- (1) all losses incurred by AWA;
- (2) all liabilities incurred by AWA; and
- (3) all costs actually payable by AWA to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by AWA in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the supply of goods or services by AWA to the Purchaser unless caused by wilful misconduct on the part of AWA or any of its employees or agents acting within the scope of their employment.

37.2 The Purchaser must pay to AWA all liabilities, costs and other expenses referred to in clause 37.1, whether or not AWA has paid or satisfied them.

38. PPSA

38.1 Words in this clause 38 have the meaning given to them by the PPSA.

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- 38.2 The Purchaser agrees to, upon request by AWA, cooperate in good faith and provide all assistance necessary including signing documentation, to enable the registration, maintenance and amendment if necessary of any Security Interest arising because of this agreement in the Goods or the Proceeds of any dealing with the Goods including Goods purchased after the date of this agreement.
- 38.3 The Purchaser hereby waives the right to receive notice of a Verification Statement in relation to any registration of a Security Interest in respect of the Goods or the Proceeds.
- 38.4 The Purchaser must not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party.
- 38.5 For the purposes of section 20(2) of the PPSA, the collateral is:
- (1) the Goods described in the tax invoice from AWA to the Purchaser at the time of the sale (or delivery) of the Goods and includes any Goods specified in each and every subsequent or updated tax invoice pursuant to this agreement from time to time and includes Goods which are inventory;
 - (2) an interest in commingled Goods to the maximum extent allowed by the PPSA; and
 - (3) the Proceeds of any dealing with the Goods.
- 38.6 The Purchaser must pay to AWA on demand all of AWA's costs associated with enforcement of any Security Interest arising under this agreement.

39. AWA terms of trade prevail

- 39.1 The Purchaser agrees that these terms of trade prevail over any purported terms and conditions of the Purchaser which may be found on a purchase order form, sales order form or on the website of the Purchaser (Purchaser's terms) notwithstanding:
- (1) these terms of trade may be entered into prior to the execution of an order form of the Purchaser; and
 - (2) anything to the contrary in the Purchaser's terms.

40. Privacy

Where goods or services are supplied to the Purchaser on credit the Purchaser irrevocably authorises AWA, its employees and agents to make such enquiries as it considers necessary to

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investigate the credit worthiness of the Purchaser including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Purchaser or any other credit providers (**Information Sources**) and the Purchaser authorises the Information Sources to disclose to AWA all information concerning the Purchaser which is within their possession and which is requested by AWA.

41. Force majeure

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

42. Entire understanding

42.1 These terms of trade:

- (1) are the entire agreement and understanding between AWA and the Purchaser on everything connected with the subject matter of these terms of trade; and
- (2) supersede any prior agreement or understanding connected with that subject matter.

42.2 AWA and the Purchaser have entered into these terms of trade without relying on any representation by the other or any person purporting to represent the other.

43. Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

44. Intellectual Property

The Purchaser acknowledges and agrees that all intellectual property rights in goods and services supplied by AWA are owned by AWA and that the Purchaser acquires no intellectual property rights in any goods or services provided by AWA to the Purchaser unless a separate deed of assignment is executed by AWA as a deed in relation to the intellectual property rights in any goods or services provided by AWA to the Purchaser.

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45. Governing law and jurisdiction

The law of New South Wales governs these terms and conditions. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia

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