

Biotol Terms & Conditions of Sale

1. Basis of Sale

1.1 The terms and conditions set out in this document (the “**Terms**”) and your order (the “**Purchase Order**”) for the products (the “**Goods**”) that Lallemand Animal Nutrition Uk Limited trading as Biotol (“**we**” or “**us**”) are selling to you as set out in the confirmation or invoice attached to these Terms (the “**Confirmation**”) are considered by us to set out the whole agreement between you and us for the sale of the Goods (the “**Contract**”).

1.2 If any of these Terms are inconsistent with any term of the Confirmation, the Confirmation shall prevail.

1.3 The Purchase Order is an offer by you to enter into a binding contract, which we are free to accept or decline at our absolute discretion.

1.4 These Terms shall become binding on you and us when: (a) we issue you with the Confirmation; or (b) we deliver the Goods to you; or (c) we notify you that the Goods are ready for collection, whichever is the earlier, at which point a contract shall come into existence between us.

2. The Goods

2.1 We warrant that on delivery, the Goods shall be of satisfactory quality and suitable for the recommended use for such Goods unless specifically stated to the contrary. Any description of Goods that has been provided is by way of identification only and the use of such description shall not constitute this Contract a sale by description.

2.2 Any warranties or conditions, statutory or otherwise as to quality or fitness for any purpose except as specifically set out by us are excluded from the Contract subject to the extent that such exclusions are permitted by law

2.3 The warranty given under clause 2.1 does not apply to any defect in the Goods arising from wilful damage, accident, negligence by you or any third party, if you use the Goods in a way that we do not recommend, your failure to follow our instructions, or any alteration you carry out without our prior written approval.

2.4 These Terms apply to any replacement Goods we supply to you in the unlikely event that the original Goods are faulty or do not otherwise conform with these Terms.

3. Delivery

3.1 We will normally deliver the Goods to you within two calendar days of the delivery date set out in the Confirmation or on the date which we notify you that they are ready. Where the Purchase Order contains more than one delivery date, each delivery shall constitute a separate Purchase Order and any failure by us to deliver the Goods under a particular Purchase Order shall not vitiate the Contract in respect of the other deliveries due under the Purchase Order.

3.2 Delivery shall be completed when the Goods have been delivered to your premises or the delivery point nominated by you in your Purchase Order or when the Goods are collected from our premises by you or by a party acting on your behalf.

3.3 We will take reasonable steps to meet the delivery date set out on the Confirmation or as otherwise agreed between us. However, any failure to comply with such times specified in the Confirmation shall not constitute a breach of Contract.

3.4 If you fail to take delivery of the Goods then, except where this failure is caused by our failure to comply with these Terms or by an event beyond your control we shall have no liability to you for late delivery and we may without prejudice to our other rights and remedies terminate the whole or any part of this Contract or refuse to make any further deliveries due under the Purchase Order:

3.5 If you have not taken delivery of the Goods within two weeks of our notifying you that they are ready, we may, after giving you reasonable prior notice in writing, resell or otherwise dispose of part or all of the Goods.

4. Defective goods and returns

4.1 In the unlikely event that the Goods do not conform with these Terms, you must let us know as soon as possible after delivery and in any event before the remainder of the Goods is used or returned to us. We will ask you to return the Goods to us at our cost and once we have checked that the Goods are faulty, we will either provide you with a full or partial refund or replace the Goods.

5. Title and risk

5.1 The Goods will be your responsibility from the time of delivery to your premises or the delivery point nominated by you in your Purchase Order or the point of departure from our premises where no point of delivery is named.

5.2 Ownership of the Goods will only pass to you when we receive payment in full of all sums due for the Goods, including delivery charges.

5.3 If the Confirmation allows provisional credit in respect of any part of the Goods it shall be without prejudice to our rights to refuse to give up possession of any other part of the Goods except against payment and the whole of the price of all goods bought or agreed to be bought by you shall fall due and payable without demand immediately on the happening of any of the following events (a) failure by you to pay any sum due to us within 14 days of the due date for payment; (b) (where you are a body corporate) the commencement of a winding up; (c) (where you are an individual) commission by you of an act of bankruptcy; (d) appointment of a receiver of any of your assets, or the levying of any distress or execution on any of your assets.

6. Price and payment

6.1 The price of the Goods will be as set out in the Confirmation. Prices may be changed by us at any time by us giving you notice whereupon you may within 14 days of such notice provide written notice to us that you wish to cancel this Contract provided that you shall not have already be deemed to have accepted the Goods.

6.2 The Confirmation will set out whether or not VAT is payable upon the Goods. However, if the rate of VAT changes between the date of the Confirmation and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Goods in full before the change in the rate of VAT takes effect.

6.3 The Confirmation will set out whether the price of the Goods includes or excludes delivery costs or whether delivery charges will be added to the cost of the Goods.

6.4 We may invoice you for the Goods on or at any time after we have dispatched them to you. You must either

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- pay the invoice in cleared monies within 30 calendar days of the date of the invoice or pay the invoice by the due date set out on the invoice.
- 6.5 If you fail to pay any part of the price of the Goods in due time we shall be entitled to treat such failure as a repudiation of the whole Contract by you and to recover damages for such breach of Contract.
- 6.6 If you do not make any payment due to us by the due date for payment (as set out in clause 6.4), we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of HSBC Bank plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with the overdue amount.
- 7. Limitation of liability**
- 7.1 Our liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of this Contract or of any duty owed to you in connection herewith, shall be limited in the aggregate to the price of the Goods in question.
- 7.2 This clause 7 does not include or limit in any way our liability for: (a) death or personal injury caused by our negligence; or (b) fraud or fraudulent misrepresentation; or (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (d) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.
- 8. Events outside our control**
- 8.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Force Majeure Event).
- 8.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following (a) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or (b) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or (c) impossibility of the use of railways, shipping, aircraft or motor transport; or (d) impossibility of the use of telecommunications or data networks or (e) any movement restrictions imposed by any agency of the UK Government.
- 8.3 Our obligations under these Terms are suspended for the period that the Force Majeure Event continues, and we will have an extension of time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Force Majeure Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Force Majeure Event.
- 9. Assignment**
- You may not transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold unreasonably. We can transfer all or any of our rights and obligations under these Terms to another organisation, but this will not affect your rights under these Terms.
- 10. Notices**
- All notices sent by you to us must be sent to Biotol at Lallemand Animal Nutrition UK Limited, Spring Lane North, Malvern Link, Worcestershire, WR14 1BU or by fax to 01684 891055. We may give notice to you at either the postal address or fax address you provide to us in the Purchase Order. Notice will be deemed received and properly served 2 hours after a fax is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post.
- 11. General**
- 11.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 11.2 If we fail, at any time while these Terms are in force, to insist that you perform any of your obligations under these Terms, or if we do not exercise any of our rights or remedies under these Terms, that will not mean that we have waived such rights or remedies and will not mean that you do not have to comply with those obligations. If we do waive a default by you, that will not mean that we will automatically waive any subsequent default by you. No waiver by us of any of these Terms shall be effective unless we expressly say that it is a waiver and we tell you so in writing.
- 11.3 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.
- 11.4 These Terms shall be governed by English law and we both agree to the non-exclusive jurisdiction of the English courts.