

## Geno SA Terms and Conditions for supply of goods

### 1. Definitions

1.1 In these terms and conditions:

**“Authorised Recipient”** has the meaning given in Condition 17.3;

**“Breakthrough Technology”** means any development in modern technology, embryo manipulation, semen technology, marker assisted selection, molecular modification (e.g. CRISPR technology), or other technological improvement, which is not the result of traditional quantitative methods;

**“Conditions”** means these terms and conditions as amended from time to time in accordance with condition 2.5;

**“Confidential Information”** has the meaning given in Condition 17.1;

**“Contract”** means a contract for the supply of Goods by Geno to the Customer whether made verbally or in writing;

**“Customer”** means the entity from whom an Order to supply Goods is received by Geno;

**“Farmer Customer”** means the third party who purchases Goods from the Customer;

**“Force Majeure”** means any event or circumstances beyond Geno’s reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events (human or animal), including without limitation outbreaks of Foot and Mouth Disease and/or similar animal disease which affects Geno’s provision of the Goods, natural disasters or extreme adverse weather conditions, compliance with the law or a governmental order, rule, regulation or direction, any default of Genos or subcontractors, or any act or omission on the part of the Farmer Customer;

**“Geno Genetics”** means Geno Semen, Geno Embryos, animals, DNA and Germplasm (including selective and unique characteristics of Norwegian Red genetics) contained within Geno Semen and Geno embryos, whether produced from traditional quantitative methods or Breakthrough Technology, whether owned by Geno, purchased from Geno, or in any way derived from or produced by use of Geno sold embryos, semen or animals in combination with any other Geno and/or non-Geno genetic material.

**“Geno IP”** means Geno Genetics, any patented or un-patented programs, methods of operation, technical knowledge and skills, DNA processes, genetic markers and tests for genetic markers.

**“Geno Semen”** means animal semen supplied by Geno;

**“Geno Embryos”** means embryos supplied by Geno;

**“Goods”** means the Goods which Geno is to supply under the Contract including Geno Semen, Geno Embryos and any other goods offered for sale by Geno from time to time as specified in the Order;

**“Intellectual Property”** includes Geno IP specifically, and in general:

(a) patents, models, rights in designs and inventions, registered and unregistered trademarks and service marks, trade and business names, copyrights, know-how, domain names, trade secrets, applications for any of those rights;

(b) the sui generis right for the maker of a database to prevent extraction or re-utilisation or both of the whole or a substantial part of the contents of that database;

(c) rights under licenses, consents, orders, statutes or otherwise in relation to a right in paragraphs (a) and (b); and

(d) rights of the same or similar effect or nature as or to those in paragraphs (a), (b) and (c), in each case in any jurisdiction;

**“Literature”** means Geno' catalogues, pamphlets, price lists advertising literature and other published literature;

**“Order”** means an order placed by the Customer for the supply of goods whether verbally or in writing;

**“Recommendations for Use”** means the recommendations (if any) relating to the storage, handling, application and/or use of the Goods contained in the Literature, product labelling or any recommendations made in writing by an authorised representative of Geno;

**“Special Terms”** means any additional terms and conditions made available by Geno from time to time and which are agreed by the parties which relate to the provision of any particular Goods;

1.2 In these terms and conditions words importing the singular number shall include the plural and vice versa; words importing any gender shall include all other genders; words importing persons shall include bodies corporate, unincorporated associations, partnerships and individuals.

## **2. Orders, acknowledgements, conditions and variations**

2.1 An Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.2 Notwithstanding that Geno may have given a detailed quotation or estimate, an Order shall only be deemed accepted when Geno issues an acceptance of the Order in writing or the Goods are delivered by Geno to the Customer pursuant to the Order (whichever is earlier), at which point the Contract shall come into existence. All Orders are subject to availability and Geno reserves the right without incurring any liability whatsoever to refuse any Order in whole or in part.

2.3 The Conditions and any Special Terms are incorporated in the Contract and contain the entire agreement and obligations between Geno and the Customer. In the case of any inconsistency between the Conditions and any Special Terms, the provisions of the Special Terms shall prevail. In the case of any inconsistency between the Conditions and any other document, whatever may be their respective dates, the provisions of the Conditions shall prevail, unless otherwise has been specifically agreed in writing.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of Geno entering into the Contract without Geno having submitted a written quotation or other letter or document incorporating or referring to the Conditions, but in circumstances where the Customer has had prior notice of the Conditions, then the Contract shall be subject to the Conditions.

2.5 No variation of the Contract by the Customer shall be binding upon Geno unless and until accepted in writing by Geno, such acceptance to be evidenced by the signature of an authorized representative of Geno.

2.6 No representations or warranties made by or on behalf of Geno, prior to the Contract shall form part of the Contract.

### **3. Price**

3.1 The price payable for the Goods shall be as set out in Geno's retail price list current at the date of acceptance of the Order for the Goods. Geno may at its discretion vary such rate at any time or as agreed in writing between the parties.

3.2 Any price set out in any quotation or estimate shall be considered to have been given solely for information and shall not constitute an obligation on the part of Geno that it will deliver the Goods at that price.

3.3 All prices are exclusive of any applicable Value Added Tax which shall be charged at the rate applicable at the date of invoice.

### **4. Terms of Payment**

4.1 Notwithstanding any other provision of the Conditions, Geno reserves the right to invoice and require payment for Goods in advance.

4.2 Unless otherwise agreed, the price for the Goods shall be due and payable to Geno in Norwegian Kroner (NOK) within 14 days of the date of invoice. A minimum of 50 % of the price will be invoiced immediately after the Order has been accepted and any remaining amount shall be invoiced at the date of delivery as set out in section 5. Time of payment is of the essence of the Contract.

4.3 If the Customer does not pay the whole or any part of the price by the due date, then the Customer shall pay to Geno interest on the amount outstanding from the due date until the actual date of payment, at the rate set in accordance with the Interest on Late Payment Act, and any expenses incurred by Geno in connection with the recovery of the outstanding amount.

4.4 The Customer shall not be entitled to withhold payment of any amount due to Geno by reason of any disputed claim by the Customer in connection with the Contract.

4.5 All payments payable to Geno under a Contract shall become due immediately on its termination despite any other provision.

### **5. Delivery**

5.1 Geno has completed the delivery of the Goods when the Goods are delivered into the custody of the Customer. Thereafter, the Customer shall bear all risks relating to the Goods. Geno shall be

responsible for transport and insurance. The Customer is responsible for obtaining import permits and securing all other formalities.

5.2 The Customer shall accept the delivery of the Goods.

5.3 Parties can expressly agree in writing upon a different method of delivery than stipulated above.

5.4 The delivery period does not commence until:

- a) the Contract is concluded;
- b) Geno has received from the Customer all data and materials required in order to commence the performance of the Agreement, including but not limited to a copy of the import permit(s) necessary for the transport of the Goods; and
- c) Geno has received the payment of the Goods by the Customer, insofar as such payment is agreed upon in the Agreement.

5.5 Any delivery period stated may in no event be regarded as a strict deadline. Changes by Geno to the delivery period, shall not entitle the Customer to annul, dissolve or terminate the Agreement. The Customer agrees that Geno will have no liability for any delays in delivery for any reason whatsoever beyond Geno's reasonable control (including without limitation any Force Majeure event).

## **6. Suspension and termination**

6.1 If the Customer becomes subject to any of the events listed in Condition 6.2, or Geno has reason to believe that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Geno, Geno may;

6.1.1 stop any Goods in transit and suspend further deliveries; and/or

6.1.2 exercise its rights under Condition 12.3; and/or

6.1.3 terminate the Contract forthwith; and, if the Goods or any part of them have been provided but not paid for, the price shall become immediately due.

6.2 For the purposes of Condition 6.1, the relevant events are:

6.2.1 the Customer fails to give delivery instructions or take delivery of the Goods or make any payment when it becomes due or commits any other breach of the Contract and fails to remedy the same within seven (7) days of receiving Geno's request in writing to do so;

6.2.2 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts;

6.2.3 the Customer commences negotiations with creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

6.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;

6.2.5 the Customer is the subject of a bankruptcy petition or order;

6.2.6 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 6.2.2 to 6.2.5 (inclusive);

6.2.7 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

6.2.8 the Customer's financial position deteriorates to such an extent that in Geno's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

## **7. Termination**

7.1 Either party may terminate the Contract at any time upon not less than one (1) month's notice in writing to the other party.

7.2 In the event of Geno (other than in any of the circumstances set out in Condition 6.2 being prevented from completing the Contract either wholly or in part in accordance with the terms of the Contract by a Force Majeure Event then further performance of the Contract shall be suspended pursuant to this Condition for the period during which Geno is so prevented.

7.3 Geno shall be under no liability whatsoever to the Customer for any direct, indirect or consequential loss or damage suffered by the Customer as a result of Geno's inability to perform its obligations under the Contract in the circumstances referred to in Condition 7.2.

7.4 Any termination or suspension of a Contract in accordance with these Conditions shall not relieve the Customer of the obligation to pay to Geno all charges accrued prior to the date of termination or suspension.

7.5 If Geno shall be prevented from delivering Goods in accordance with the Contract as a result of:

7.5.1 delay or default on the part of the Customer; or

7.5.2 any other reason beyond Geno's reasonable control; and the Contract is not terminated in accordance with the other provisions of this Condition 7;

then Geno shall be entitled to reschedule the date or dates for such delivery of Goods.

7.6 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination and shall not affect any continuing obligations of the parties under these Conditions. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **8. Warranty**

8.1 Geno undertakes to use reasonable care and skill in supply of the Goods and Geno undertakes to comply with all legislation and regulations for the time being in force applicable to Geno's performance of the Contract.

8.2 Notwithstanding the provisions of this Condition 8, and having due regard to the inherent risks and uncertainties involved in all biological processes, Geno does not guarantee, warrant or represent that a particular outcome will occur as a result of the supply by Geno of any Goods. In particular, but without limitation to the generality of the foregoing, the Customer agrees and acknowledges that:

8.2.1 any information published by Geno in respect of the past performance of any bull or of any bull's progeny does not constitute a representation or warranty by Geno as to the future performance of the bull or its semen or of any of its progeny; and

8.2.2 Geno makes no representation or warranty that any Geno Semen supplied under the Contract is free from any recessive genes which may lead to genetic abnormalities or contribute to disease, impairment or death.

## **9. Liability to Third Parties**

9.1 The Customer indemnifies Geno against any and all claims against Geno from the Customer's agents, employees, representatives, Farmer Customers and/or other third parties, regarding damage in respect of which Geno has excluded and/or limited liability towards the Customer, and agrees to never hold any agents, employees or representatives of Geno liable .

9.2 The Customer shall notify Geno immediately of any claim made or action brought or threatened alleging infringement of the rights of any third party. Geno shall have control over and conduct any such proceedings in such manner as it shall determine. The Customer shall provide all such reasonable assistance as Geno may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine.

## **10 Liability Limitation**

10.1 Geno's liability to the Customer under the Contract shall (subject to the provisions of Condition 10.2, 10.6 and 10.7) be limited as set out in this Condition. Geno shall not be liable to the Customer or any other party for:

10.1.1 non-delivery of Goods unless the Customer notifies Geno of a claim in writing within seven (7) days of the agreed date for delivery or performance;

10.1.2 shortages in quantity of Goods delivered unless the Customer notifies Geno of a claim in writing within seven (7) days of receipt of the Goods by the Customer.

10.1.3 any defects in the Goods resulting from, caused by or occurring during:

10.1.3.1 failure by the Customer to follow Geno's Recommendations for Use or other instructions;

10.1.3.2 abnormal or unsuitable conditions of storage; and/or

10.1.3.3 storage or transportation, use, or any act, neglect or default of the Customer or any third party;

10.1.4 any loss or damage suffered or incurred (or likely to be suffered or incurred) by the Customer arising out of or in connection with any:

10.1.4.1 defective third party stock, unless Geno is proven liable; or

10.1.4.2 presence in any Geno Semen of any genetic defect or disorder (including without limitation Complex Vertebral Malformation).

10.2 If liability is accepted by Geno under Condition 10.1.1 or 10.1.2, or Geno is adjudged to be liable under these Conditions by a court of competent jurisdiction, Geno's only obligation is, at its sole option and in order of preference as set out below:

10.2.1 to replace such Geno Semen, where Geno is able to supply from its own stocks or from the same bull if available; or

10.2.2 if compliance with Condition 10.2.1 is not possible, to replace such Geno Semen with semen that Geno deems, at its sole discretion, to be of similar genetic merit, if available; or

10.2.3 if compliance with Conditions 10.2.1 or 10.2.2 is not possible, to refund to the Customer whichever is the lower of the purchase price or the current retail price for such semen.

10.3 No claims for shortages in quantity, loss, damage or defects in Goods will be accepted by Geno under Condition 10.1 if intact packaging is not delivered to Geno within twenty-one (21) days from notification of any such claim and the Customer hereby agrees to permit Geno full and free rights of access to inspect the Goods and investigate the claim.

10.4 Subject to the remainder of this Condition 10.4, any liability of Geno in relation to the death, damage or injury of any animal shall be limited to the difference between the value of the animal immediately before the death, damage or injury and its value immediately thereafter.

10.5 Any liability of Geno in relation to the birth of any calf following any supply of Geno Semen, shall be limited to the difference in value between the calf as born and the value on the date of birth of such calf of a calf produced by use of the correct Geno Semen.

10.6 In all instances other than as specified in Conditions 10.4 and 10.5, but subject to Conditions 10.7 and without prejudice to Conditions 10.1, 10.2 and 10.3 the total aggregate liability of Geno shall in no circumstances exceed 50 % of the fees paid from the Customer for Goods supplied under the Contract in the twelve (12) month period preceding the event giving rise to any claim;

10.7 In no circumstances and notwithstanding any other provision of these Conditions shall Geno be liable for any indirect, special or consequential liabilities, losses, charges, damages, costs and expenses suffered by the Customer.

## **11. Customer's obligations**

11.1 The Customer shall:

11.1.1 obtain sufficient and adequate insurance to cover any risks, loss or damage specified in Condition 10.1 taking into account the limits of Geno' liability specified in Condition 10;

11.1.2 provide (and procure that the Farmer Customer(s) shall provide) Geno, its employees, agents, consultants and subcontractors, with access to the Customer's (or the Farmer Customer's) premises and other facilities as reasonably required by Geno;

11.1.3 obtain and maintain (and procure that the Farmer Customer(s) shall obtain and maintain) all necessary licences, permissions and consents which may be required before the date on which the Goods are to be delivered; and

11.1.4 where Goods are stored at the Customer's or the Farmer Customer's own premises, ensure and procure that the Farmer Customer(s) shall ensure that the Goods are stored in containers which are maintained properly and are in good working order. Geno accepts no liability whatsoever for any loss or damage caused by faulty or defective storage containers.

## **12. Title to Goods**

12.1 Until payment in full of all monies due and owing by the Customer to Geno on any account whatsoever has been received in full, legal and beneficial ownership of the Goods shall be retained by Geno notwithstanding that the risk in the same shall pass to the Customer at the time of delivery.

12.2 Until title to the Goods has passed to the Customer, the Customer shall:

12.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Geno's; and

12.2.2 maintain the Goods in satisfactory condition, store the Goods in accordance with product instructions and keep them insured against all risks for their full price from the date of delivery; and

12.2.3 notify Geno immediately if it becomes subject to any of the events listed in Condition 6.2.

12.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Condition 6.2, or Geno reasonably believes that any such event is about to happen and notifies the Customer accordingly, then Geno may at any time require the Customer to deliver the Goods back to Geno.

### **13. Risk**

13.1 The risk in the Goods shall pass to the Customer at the time when delivery is deemed to be effected as provided in the Condition 5.1.

13.2 From the time of delivery until ownership of the Goods passes to the Customer in accordance with Condition 12, the Customer shall insure the Goods against all risks for their full value with a reputable insurance office to the reasonable satisfaction of Geno. Upon request, the Customer shall use all reasonable endeavours to have Geno's interest in the Goods noted on the insurance policy and shall produce the policy of insurance to Geno. The Customer shall hold the proceeds of any claim on the insurance policy on trust for Geno and shall immediately account to Geno with the proceeds.

### **14. Customer's warranties**

14.1 The Customer warrants, represents and undertakes to Geno that the Customer will use and store the Goods strictly in accordance with the Recommendations for Use and with all relevant regulations, and that the Goods are used and otherwise handled by qualified personnel.

14.2 The Customer shall indemnify (and keep indemnified) Geno against any claim, loss or damage arising directly or indirectly from any breach of the warranty, representation and undertaking contained in Condition 14.

### **15. Descriptions**

15.1 Geno undertakes to use reasonable care and skill in the compilation of the Literature.

15.2 Notwithstanding the provisions of Condition 15.1, any figures, statements, descriptions, illustrations, photographs, drawings or any other matters contained in the Literature are not guaranteed to be accurate and are intended merely to represent a general picture of Geno's goods and shall not form part of the Contract.

### **16. Intellectual Property rights**

16.1 Geno reserves all rights in relation to Geno IP and other Intellectual Property rights, in respect of all Goods delivered by Geno.



16.2 The Customer purchases the Goods only for its own distribution to Farmer Customers, and is not entitled to pass on the Goods to any other third party without the prior consent in writing from Geno.

16.3 The Customer is not entitled to sell animals inseminated with Geno Semen to third parties which run, or have the intention of running, business in competition with Geno.

16.4 Customer agrees that (i) Geno Semen shall only be distributed by Customer for the purpose of single-use artificial insemination and not for in-vitro-fertilization or embryo transfer unless specifically approved for the Customer by Geno in writing,

16.5 Progeny from insemination of Geno Semen or insertion of Geno Embryos may be utilized by the Customer only for own production or sold only domestically as livestock.

16.6 The Customer acknowledges the Intellectual Property rights of Geno and/or its licensors and undertakes not to violate, challenge or undermine those Intellectual Property rights in any manner.

16.7 If Geno or its employees or agents design the Goods pursuant to a commission from the Customer or a Farmer Customer, then any Intellectual Property rights created in relation to the Goods shall vest in Geno. The Customer shall do any acts and execute any documentation required by Geno to secure the proper vesting of title to such Intellectual Property rights in Geno.

16.8 All information, proposals, sketches, drawings, models, designs, specifications, data, documents and other commercial information issued to the Customer by Geno in the framework of the Contract and/or produced in that connection may not be used by the Customer in any other manner than for the purpose for which they were made available to the Customer by Geno, and shall at all times remain the property of Geno and/or its licensors.

16.9 The Customer shall in the Customers contracts with Famer Customers procure that Farmer Customers have the same responsibilities and obligations towards Geno as set out for the Customer in Conditions 16.1 to 16.8 (inclusive).

## **17. Confidential Information**

17.1 In this Condition 17, Confidential Information means all information disclosed by Geno to the Customer, whether before or after the date of the Contract, including information relating to Geno's products, operations, processes, plans or intentions, product information, know-how, trade secrets and other Intellectual Property, market opportunities, business affairs, financial information and other confidential information.

17.2 During the term and after expiry or termination of the Contract for any reason, the Customer:

17.2.1 may not use Confidential Information for any purpose other than the performance of its obligations under the Contract;

17.2.2 may not disclose Confidential Information to a person except with the prior written consent of Geno or in accordance with Condition 17.3 and 17.4; and

17.2.3 shall make every effort to prevent the use or disclosure of Confidential Information, including by restricting access to Confidential Information.

17.3 During the term, the Customer may disclose Confidential Information to any of its directors, other officers and employees (each an Authorised Recipient), to the extent that disclosure is necessary for the purposes of the Contract.

17.4 Before disclosure of Confidential Information to an Authorised Recipient, the Customer shall ensure that the Authorised Recipient executes a confidentiality agreement in favor of Geno in a form approved by Geno. The Customer shall ensure that the Authorised Recipient at all times complies with the confidentiality agreement.

17.5 Conditions 17.2 to 17.4 do not apply to Confidential Information which:

17.5.1 is, at the date of the Contract, or at any time after that date becomes, publicly known other than by the Customer's or Authorised Recipient's breach of these Conditions;

17.5.2 can be shown by the Customer to Geno's satisfaction to have been known by the Customer before disclosure by Geno to the Customer; or

17.5.3 is required to be disclosed by law or a court of competent jurisdiction.

17.6 The Customer shall in the Customer's contracts with Farmer Customers procure that Farmer Customers have the same obligations towards Geno as set out for the Customer in Conditions 17.1 to 17.5 (inclusive).

## **18. Severability**

Notwithstanding that the whole or any part of any provision of the Conditions may prove to be illegal or unenforceable the other provisions of the Conditions and the remainder of the provision in question shall remain in full force and effect.

## **19. Applicable Law, Disputes and Jurisdiction**

The Contract including the Conditions shall be construed and take effect in all respects in accordance with Norwegian law, so that any dispute between the parties regarding the Contract, shall be governed in all respects by Norwegian law. Hedmarken District Court shall have jurisdiction to settle any disputes which may arise out of or in connection with the Contract.

## **20. Assignment**

The Customer shall not assign, encumber, dispose of, declare itself trustee of, or otherwise transfer the Customer's rights under the Contract or the Conditions.

## **21. Chain of contracts**

The Customer shall have the right to review all contracts between the Customer and Farmer Customers for sale of Goods delivered by Geno to the Customer, to ensure that necessary terms and conditions are in place to secure Geno's position in accordance with the Contract, towards both the Customer and the Farmer Customer.