
PORC-EX A/S' General Terms of Sale and Delivery

[Latest changes 11-09-2017]

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1. APPLICATION

- 1.1. These terms of Sale and Delivery apply to any trade/agreement with Porc-Ex on the purchase or transport of piglets in Denmark or for export, unless otherwise agreed upon in writing between Porc-Ex and the Buyer.
- 1.2. Buyer's business terms, if any, are not valid, unless accepted by Porc-Ex in writing.
- 1.3. The Buyer is obligated to obtain knowledge of conditions stipulated in Porc-Ex's general terms of sale and delivery before an agreement is signed or a delivery is made.

2. EFFECTIVE DATE OF AGREEMENTS AND NOTICE OF CHANGE AND TERMINATION

2.1. **Ongoing agreements**

- 2.1.1. Ongoing agreements shall enter into force when both the Buyer and Porc-Ex have signed the agreement; latest 10 days after the agreements is proposed/sent to the Buyer. Porc-Ex can however annul the agreement up to 30 days hereafter, provided that Porc-Ex has not received a signed agreement with Danish or foreign pig breeder.
- 2.1.2. Annulment of the agreement cf. section 2.1.1. shall be entitled without incurring any liability for compensation.
- 2.1.3. Ongoing agreements can be changed or terminated with the notice as stated in the agreement, without incurring liability for compensation. Should an ongoing agreement be terminated without the required notice, the other party shall be entitled to receive compensation for the loss the wrongful termination might have caused.
- 2.1.4. Any change to the ongoing agreement or termination of the ongoing agreements shall be made in writing and by e-mail, and become valid upon dispatch to the other party.

2.2. **Order confirmation for pooled sales [Short notice/single trade deals based on free market]**

- 2.2.1. Order confirmation shall enter into force upon dispatch from Porc-Ex by, e-mail or fax to the Buyer.

2.3. **Verbal agreements**

- 2.3.1. Verbal agreements shall enter into force as they are entered into by Porc-Ex and the Buyer.

3. QUALITY

3.1. **Tail docking**

- 3.1.1. Piglets traded by Porc-Ex are three-raced [LY*DD] tail docked pigs.

3.2. **Weight**

- 3.2.1. Piglets sold as "30 kg pig", weight from 26-35 kg at delivery and have an average weight of 28-33 kg.
- 3.2.2. Piglets sold as "7 kg pig", weight from 7-12 kg at delivery and have an average weight of 9-11 kg.

3.3. **Open sores**

- 3.3.1. Upon delivery, piglets must not have open sores resulting from tail docking, castration, tail biting, ear suckling, flank suckling or similar.

3.4. **Hernias**

- 3.4.1. Porc-Ex does not trade piglets with umbilical or scrotal hernias.

3.5. **Other defects**

- 3.5.1. Porc-Ex does not trade piglets that are unthrifty, lame, with hunched backs, with saddle barring or with abscesses.

3.6. **Partial/full cryptorchidism**

3.6.1. Porc-Ex does not trade piglets with partial or full cryptorchidism.

4. HEALTH STATUS AND RESPONSIBILITY

- 4.1. In connection with conclusion of an agreement, be oral or written cf. section 2, Porc-Ex is obligated to inform what the official health status [SuS] of Porc-Ex's seller/pig producer is.
- 4.2. If Porc-Ex's seller/pig producer is not part of the health system [SuS] – the Buyer can request updated documented blood samples to determine health status [documented health status].
- 4.3. Porc-Ex is obligated to inform the Buyer immediately if any change should occur or there is suspicion of change to the official health status [SuS] cf. section 4.1 or documented health status cf. clause 4.2.
- 4.4. The Buyer is not obligated to buy piglets originated from Porc-Ex's seller/pig producer with change in health status, no matter if it is the official or documented health status. If the health status cf. section 4.1 or 4.2 changes to a better health status, Porc-Ex shall be able to terminate the agreements with the Buyer with immediate effect without further notice, and without occurring any liability for compensation. .
- 4.5. If change occurs to the health status cf. section 4.1. or 4.2 Porc-Ex is not obligated to deliver piglets of a corresponding health status as before re-infection.
- 4.6. If the Buyer is not obligated to buy the piglet due to conditions cf. section 4.4., and the Buyer does not accept to buy piglet with the new poorer health status, Porc-Ex will seek to find an alternative delivery from another pig producer. However, Porc-Ex is not obligated to find such alternatives.
- 4.7. Porc-Ex has no responsibility what so ever, for the health status of the piglets, be it the official or documented health status. Porc-Ex is only responsible in forwarding the information cf. section 4.1, 4.2 and/or 4.3.
- 4.8. The Buyer bears all health risks in following situations:
 - Undetected infection, including infections in the incubation stage.
 - Infection occurred/transmitted under transportation

5. EAR TAGGS

5.1. All piglets sold through Porc-Ex are prior to delivery, fitted with approved yellow ear tags with the delivered herds CHR number.

6. TRANSPORT

- 6.1. When Porc-Ex has the responsibility of transporting the piglets, the transport is conducted in vehicles that are not SuS [health system] certified.
- 6.2. Transports conducted by Porc-Ex are at all time subject to the, at all time applicable laws for the transport of live animals – including but not limited to rules for space allowance per animal, total weight per load etc.

- 6.3. If the number, size or weight of piglets at loading time differs from conditions agreed between the parties, Porc-Ex or its representative [the driver] can refuse to load certain amount of piglets in order to fulfill obligation cf. applicable laws.

7. BUYERS FACILITIES / DELIVERY

- 7.1. Arrival to and departure from Buyers delivery/collection facilities shall occur on solid, well drained, stabilized and even ground in all weather conditions.
- 7.2. The transport vehicle shall be able to manoeuvre without hindrance from trees, building, including but not limited to overhang and similar.
- 7.3. The driver shall be able to move around the vehicle without restriction in relation to unloading.

8. TERMS AND CONDITIONS OF DELIVERY AND TRANSFER OF RISK

- 8.1. Terms and conditions of delivery and transfer of risk will be agreed between the Buyer and Porc-Ex individually for each delivery and according to the latest version of INCOTERMS at the time at which the piglets are delivered.
- 8.2. Transfer of risk do not cover disease related death, cf. section 4.7 and 4.8.

9. CLAIMS / COMPENSATION

9.1. Claims

- 9.1.1. If there occurs any failures to delivered piglet or fulfillment of the agreement, the failure shall be asserted as soon the failure can be ascertained. Claims submitted after this time forfeit the right to compensation.
- 9.1.2. Claims for visible deficiencies of the piglets must be submitted no later than 24 hours after unloading at the Buyer's place. Claims submitted later than 24 hours after unloading at the Buyer's place forfeit the right to compensation.
- 9.1.3. Claims for piglets with cryptorchidism/hermaphrodite must be submitted no later than 3 weeks after the piglets are slaughtered.

9.2. Compensation

- 9.2.1. Piglets that upon receipt by the Buyer weigh 5 kg or more under the minimum weight specified in the agreement between the parties will be discounted with 50 % of the set price. Deviances less than 5 kg will be discounted with 25 % of the set price. The weight of these piglets is deducted from the total weight of the delivery, after which the price of the remaining piglets is calculated.
- 9.2.2. If the average weight exceeds the agreed maximum weight, the price of the delivery is calculated according to the maximum agreed average weight.
- 9.2.3. Following defects are compensated by Porc-Ex with full set purchase price, as long as section 9.1 and/or 9.2 are fulfilled:

- Open sores resulting from tail docking, castration, tail biting, ear suckling, flank suckling or similar.
- piglets with umbilical or scrotal hernias
- Unthrifty, lame, with hunched backs, with saddle baring or with abscesses.
- piglets with partial or full cryptorchidism
- piglets with hermaphrodite.

10. BREACH OF CONTRACT AND REMEDIES

- 10.1. Should one of the parties breach an Agreement, the other party shall, be entitled to cancel the agreement or claim compensation.
- 10.2. It shall only be possible to cancel the agreement if a material breach of contract has occurred, cf. clause 10.3,
- 10.3. By material breach of contract is meant
- a) that an Agreement, despite a written warning from the other party, is breached again in the same way;
 - b) gross infringement of the Agreement, these Terms of sale and delivery
 - c) anything that can otherwise be considered as material breach of contract pursuant to the general rules of Danish law.
- 10.4 In the event of material breach of an Agreement, the injured party shall be entitled to cancel the agreement in full or in part and to claim compensation from the party in breach.

11. LIABILITY

- 11.1. In case where the Buyer suffer documented loss, be it material or economical, as a result of Porc-Ex's fault, absenteeism or insufficient fulfilment of the agreement, is Porc-Ex liability limited to a maximum amount based on the set price at the time of delivery.
- 11.2. Porc-Ex is at no time liable for Buyer's indirect losses including operating loss, loss of profit or similar indirect loss or damage.

12. FORCE MAJEURE

- 12.1. "Force Majeure" shall mean all events which are beyond the control of the Parties to this Contract, and which are unforeseen, unavoidable or insurmountable, and which arise after the effective date of any agreement and which prevent total or partial performance by any of the Parties. Such events shall include, but not limited to earthquakes, typhoons, flood, fire, war, failures of international or domestic transportation, acts of government or public agencies, epidemics, veterinary restrictions, civil disturbances, social strikes, bankruptcy and any other event which cannot be reasonably foreseen, prevented or controlled.

- 12.2. If an event of Force Majeure occurs, a Party's contractual obligations affected by such an event shall be suspended during the period of delay caused by the Force Majeure and the period for performing such obligations shall be extended, without penalty, for a period equal to such suspension.
- 12.3. The Party claiming Force Majeure shall promptly inform the other Party[s] in writing and shall furnish within fifteen [15] days thereafter sufficient proof of the occurrence and expected duration of such Force Majeure. The Party claiming Force Majeure shall also use all reasonable endeavors to terminate the Force Majeure.
- 12.4. In the event of Force Majeure, the Parties shall immediately consult with each other in order to find an equitable solution and shall use all reasonable endeavors to minimize the consequences of such Force Majeure. If any Force Majeure continues for more than 180 days in the aggregate and effecting the performance of the Contract, either Party shall have the right , but not the obligation, to terminate this Contract.

13. PRICE DETERMINATION AND PAYMENT

- 13.1. The set price for piglets is regulated according to the agreed basis weight. Deviances in relation to the basic weight are regulated in accordance with the Danish pig production's piglet price at the time of delivery.
- 13.2. The weight, which establish the basis for the set price, is verified on a weighbridge in Denmark.
- 13.3. The set price is inclusive the, at all time valid, production payment to the Pig Levy Fund, and excluding VAT.
- 13.4. The set price is inclusive, at all time valid, costs for official veterinary supervision connected with the directive relating to payment for the control of food and live animals etc.

14. RETENTION OF PROPERTY

- 14.1. All piglets sold/delivered on credit, remain the property of Porc-Ex until Buyer has paid all outstanding debts in connection with that specific trade.
- 14.2. Further to section 13.4, the Buyer shall feed and take care of the delivered piglets in secure and acceptable manner and insure the piglet against fire, slaughtering [because of official order or similar] and other possible damages. The sum insured shall be considered as Porc-Ex outstanding debt.

15. RETENTION OF PROPERTY/ EIGENTUMSVORBEHALT – GERMAN CUSTOMERS ONLY

- 15.1. Die gelieferte Ware bleibt bis zur vollständigen Bezahlung sämtlicher Forderungen aus der Geschäftsverbindung zwischen uns und dem Besteller unser Eigentum (Vorbehaltsware).
- 15.2. Der Besteller ist berechtigt, die Vorbehaltsware zu veräußern oder anderweitig darüber zu verfügen, sofern dies in seinem Betrieb zu den normalen Geschäften gehört. Eine Verpfändung, Sicherheitsübereignung oder Sicherungsabtretung ist ihm nicht gestattet. Der Besteller ist verpflichtet, unsere Rechte als Vorbehaltseigentümer beim Weiterverkauf von Vorbehaltsware auf Kredit zu sichern. Die dem Besteller aus der Weiterveräußerung oder sonstigen Verfügung über die Vorbehaltsware entstehende Forderung tritt der Besteller schon jetzt an uns ab, wir nehmen die Abtretung schon jetzt an.

- 15.3. Eine etwaige Be- und Verarbeitung der Vorbehaltsware nimmt der Besteller für uns vor, ohne dass für uns daraus Verpflichtungen entstehen. Bei Verarbeitung, Verbindung, Vermischung oder Vermengung der Vorbehaltsware mit anderen, nicht uns gehörenden Waren steht uns der dabei entstehende Miteigentumsanteil an der neuen Sache im Verhältnis des Rechnungswertes der Vorbehaltsware zu den übrigen Waren zu. Erwirbt der Besteller Alleineigentum an der neuen Sache, räumt er uns das Miteigentum ein und verwahrt die Sache unentgeltlich für uns. Wird die Vorbehaltsware zusammen mit Vorbehaltswaren anderer Lieferanten weiterveräußert, und zwar gleich, ob ohne oder nach Verarbeitung, Verbindung, Vermischung oder Vermengung, so gilt die oben vereinbarte Vorausabtretung nur in Höhe des Rechnungswertes unserer Vorbehaltsware, die zusammen mit den anderen Vorbehaltswaren weiterveräußert wird.
- 15.4. Zur Sicherung unserer Forderungen gegen den Bestseller tritt uns der Besteller auch solche Forderungen ab, die ihm durch die Verbundung des Liefergegenstandes mit einem Grundstück gegen einen Dritten erwachsen; wir nehmen diese Abtretung schon jetzt an.
- 15.5. Bei Zahlungsrückstand oder anderem vertragswidrigen Verhalten des Bestellers sind wir auch ohne vorherige Fristsetzung berechtigt, von dem Vertrag zurückzutreten und die Vorbehaltsware zurückzunehmen; der Besteller ist zur Herausgabe verpflichtet. Zwecks Zurücknahme der Ware gestattet uns der Besteller unwiderruflich, seine Geschäfts- und Lagerräume ungehindert zu betreten und die Vorbehaltsware mitzunehmen. In einer solchen Zurücknahme der Vorbehaltsware liegt kein Rücktritt vom Vertrag, es sei denn, wir erklären dies schriftlich.
- 15.6. Der Besteller ist verpflichtet, die gelieferte Vorbehaltsware auf seine Kosten gegen Feuer, Einbruch, Diebstahl und Wasserschäden versichern zu lassen.

16. TRANSFER OF RIGHTS

- 16.1. Upon Buyer's sale/transfer of property or livestock, the Buyer can exclusively transfer his rights and obligations to the new owner/another legal entity if Porc-Ex accepts the sale/transfer in writing.
- 16.2. If Porc-Ex does not accept the transfer, or the new owner does not want to enter into the agreement between Porc-Ex and the Buyer, the Buyer [seller of the property] shall continue with full responsibility towards Porc-Ex in accordance with the agreement between the parties.
- 16.3. Should P transfer to another form of ownership such as I/S (partnership), ApS (small private limited company) and A/S (limited company) change name or engage in legal restructuring, the new company will automatically assume the same rights and obligations which applied to P prior to the transfer. The Purchaser is obligated hereafter to fulfil current agreements entered into with P in relation to the new company.

17. VENUE AND APPLICABLE LAW

- 17.1. Any dispute between the parties must be tried solved by negotiation.
- 17.2. If the dispute cannot be settled by negotiation, it must be set in accordance with Danish law and at Porc-Ex's venue in Kolding.