

# Trading on Ex-Trade A.m.b.a. - The General Trade Rules



## **1. Procedure for trading via Ex-Trade**

### **1.1 Normal opening hours**

Normal opening hours for Ex-Trade's trading platform are from 0900 to 1700 hours on Monday to Thursday, and 0900 to 1500 hours on Friday (Central European Time). Trading on Ex-Trade may be suspended on certain public holidays. Regular information will be given on this matter. Ex-Trade is entitled to disconnect the trading platform for adjustment, update, error correction purposes and other purposes. Ex-Trade aims to make any interruption on the trading platform as brief as possible. Ex-Trade shall not be held liable for any temporary interruption and/or disconnection of the trading platform.

### **1.2 What can be traded on Ex-Trade?**

Via Ex-Trade's trading page and platform all types of eggs and egg products can be traded.

The traded shell eggs range from Cage eggs, Barn eggs, Free-range eggs to Organic eggs either graded, ungraded or for the breaking industry. Ex-Trade is a member of KAT and GGE and can therefore also trade eggs with these certifications.

Egg products range from liquid egg white, whole egg and egg yolk in bulk tankers or full tanker loads and also frozen and powdered egg products.

The supply of washed eggs is not allowed, unless otherwise agreed.

If eggs bid or offered through Ex-Trade trading system are eggs which have been stored in a Cold store (EU-directive) for a shorter or longer period, such eggs can only be traded via Ex-Trade if seller/buyer informs Ex-Trade about this when a bid/offer is presented to Ex-Trade.

#### **1.2.1 Who can trade on Ex-Trade?**

Only members of Ex-Trade A.m.b.a. (incl all registered departments/divisions) and test members can trade on Ex-Trade.

If an EU company (packing station, wholesaler, breaking plant) wishes to apply for test membership, then the written membership application should be approved by the board of directors, before trading on Ex-Trade is possible. An approved test member can trade on same conditions as full members, but without the bonus earning benefits.

### **1.3 Units of trading**

The quantities/units traded within the individual transactions can be seen on Ex-Trade's trading platform.

The designation full consignment normally covers 840 boxes with 360 pcs. each or about 18,900 kg. Weights and quantities may vary when dealing with full consignments. If the exact quantity is not stated, the quantity may vary by +/- 7%.

Members can trade any quantity of eggs or egg products, provided Ex-Trade is notified of the specified quantity when the bid/offer is placed with Ex-Trade. Variations above or below the standard trading units must be negotiated through Ex-Trade with the seller member and the buyer member when concluding the trade.

### **1.4 Weight and quality considerations for shipping and on reception**

All trading shall be concluded in accordance with the current EU regulations for trade with shell eggs and egg products. Further, Ex-Trade or the buyer member can require special quality requirements for a delivery of eggs and egg products.

For trades not covered by these regulations, the trading rules and established trading norms shall apply. In case of doubt, rules may be decided or introduced by Ex-Trade Trade Rules and Arbitration Committee.

In the event of deliveries of ungraded eggs, a weight slip must be enclosed by the seller, stating the gross, net and tare weight of the consignment, and a copy of the weight slip shall be sent to Ex-Trade at the dispatch of the delivery. The recipient may choose to accept this weight, or carry out a control weight inspection.

Through a comparison of the weight slips/weights from seller and buyer Ex-Trade will seek an agreement between the parties on the weight to be used for invoicing. In case of disagreement, Ex-Trade will seek to find a solution. If this is not possible, the disagreement shall be presented to Ex-Trade's Trade and Arbitration Committee for settlement. If a disagreement on the weight represents 100 kg or less and no other solution can be found based on the information from the parties, Ex-Trade may administratively split the difference 50/50 between seller member and buyer member.

Tare weight shall be in accordance with the current trading norms.

The eggs shall be packaged and transported under good conditions, taking the temperature into account.

*If the eggs are being delivered on plastic packaging, then these have to be kept well and safe until they are returned to the seller (or picked up by the seller). All missing plastic packaging will be invoiced directly from the seller to the buyer via Ex-Trade.*

### **1.5 The placing of sales offers or purchase bids on Ex-Trade**

The set-up of Ex-Trade is designed to ensure that the buyer members and seller members spend as little time as possible on placing their trade bids via Ex-Trade.

When a buyer or seller is interested in trading, the following procedure shall be used:

1. Ex-Trade is contacted either by telephone, fax or e-mail. Ex-Trade's staffs are always available for a chat about the current market trends.
2. When a buyer member or seller member has settled on a given product, price and other conditions, this information will be placed on Ex-Trade trading platform by the Ex-Trade staff and can then be seen immediately by all Ex-Trade members.
3. A sales offer or purchase bid is binding for a minimum of one hour. Thereafter, the bid or offer can be changed and/or withdrawn. However, a sales offer for a given consignment can be decreased and a purchase bid can be increased before the hour is over.
4. If an offer from a seller member matches the bid from a buyer member (or vice versa), a trade agreement is concluded. All sales offers and purchase bids on the trading page are neutral, which means that only the member who placed the sales offer or purchase bid and Ex-Trade know the identity of the seller member and the bidder/buyer member. The identity of the buyer member and seller member will only be revealed once a transaction has been concluded, and then only to the buyer member, the seller member and Ex-Trade.
5. It is also possible to place sales offers and purchase bids with the purpose of concluding contracts for a longer period than 4 weeks or minimum 4 trades concluded at the same time. The sales offer/purchase bid is entered on Ex-Trade trading platform as normal, but with a price of 0.00, and it is stated that it is a contract which is open for bids. If a member is interested, Ex-Trade is contacted and a price given. The price is passed on to the member looking for a contract who can then accept the price, make a counter bid or wait for a better price.

Concluded trade agreements are shown on Ex-Trade trading platform from the time they are concluded until Sunday 2400 hours (Central European Time) in the same week. Concluded trade agreements will only be shown on Ex-Trade trading platform in the week of closing.

## **2. General Trade Rules**

### **2.1 Background and binding effect of the general trade rules**

The cooperative members' meeting has adopted the General Trade Rules (also referred to as the "trade rules") set out in this section 1 and 2 under the heading "Trading on Ex-Trade A.m.b.a. - The General Trade Rules" in accordance with art. 7.1 of the Articles of Association for Ex-Trade A.m.b.a. The General Trade Rules set out in this section 1 and 2 are binding, and the members must comply with the General Trade Rules as regards all turnover and trade with Ex-Trade pursuant to art. 7.2 of the Articles of Association.

Accordingly, all buyers and sellers being members of Ex-Trade A.m.b.a. have accepted and shall respect the General Trade Rules when trading with and via Ex-Trade as buyers and sellers.

Ex-Trade's trading rules may be translated into several languages, but it is the English version that is the legally binding version.

### **2.2 Providing full information when placing bids and offers**

When placing a bid or offer, it must be clearly stated whether it is a bid to buy or an offer to sell, at a fixed price or at a price to be settled later at a more specific time and on more specific terms.

Bids to buy should reflect the price the buyer member is willing to pay with a specified delivery term in accordance with Incoterms 2010. Offers to sell should reflect the seller member's asking price specifying the seller's relevant Incoterms 2010. The name and location of a bid or offer must be given at the time the bid or offer is entered. Any new trading location must be registered by Ex-Trade before a bid or offer can be made.

Bids and offers may be entered at whatever price level the buyer member or seller feels reflects existing market conditions. Extremely high offers and extremely low bids have no market value, and will be discouraged by the staff.

Seller member must specify whether the eggs are washed or packed in anything other than standard cases, or if the consignment is on racks or pallets.

Buyer member and seller member should provide Ex-Trade's staff with full information when placing bids and offers. This will help the buyer member and seller member to conclude a satisfactory trade agreement.

### **2.3 Ex-Trade's exemption of liability**

Below section has been approved by the members at the AGM 2018

***Ex-Trade A.m.b.a. will not accept any financial responsibility on any disputes either from the seller or buyer that cannot be resolved with the assistance of the Ex-Trade Arbitration Committee.***

Historically, Ex-Trade has been the middleman buyer and middleman seller of the eggs and egg products traded through Ex-Trade, and the trading platform of Ex-Trade. This has been and is the purpose of Ex-Trade pursuant to art. 1.4 of the Articles of Association of Ex-Trade A.m.b.a.

Today's services provided by Ex-Trade are, however, more the services of a facilitator than a traditional commercial middleman. Ex-Trade provides a trading platform including an online trading platform for eggs and egg products, which can be used by members of Ex-Trade A.m.b.a. as either buyers (also referred to as buyer members) or sellers (also referred to as seller members). The remuneration/service fee paid by members of Ex-Trade A.m.b.a. and the service charge payable for buyer members and seller members is very low. The remuneration is not in line with or proportional to the traditional commercial middleman risk which Ex-Trade A.m.b.a. undertakes by assuming a formal position as middleman buyer of a seller member's eggs and egg products and then assuming a position as middleman seller of the same eggs and egg products to the buyer member.

Therefore, Ex-Trade disclaims any liability towards the seller member that the seller member cannot claim from the buyer member pursuant to the trade agreement on the sale and purchase of eggs and/or egg products. Vice versa, Ex-Trade disclaims any liability towards the buyer member that the buyer member is not able to claim directly from the seller member pursuant to the trade agreement on the sale and purchase of eggs and/or egg products. A seller member and a buyer member making a trade agreement for the sale/purchase of eggs and/or egg products facilitated through Ex-Trade and/or Ex-Trade online platform (but made formally and legally with Ex-Trade as middleman buyer and middleman seller of the very same eggs and/or egg products) cannot make Ex-Trade liable for any delay, any liability or any claim for damages that

the seller member and/or the buyer member cannot claim against each other pursuant to the trade agreement between the seller member and the buyer member including - if applicable - the seller member's terms of sale and delivery (or similar terms) and/or the buyer member's purchase terms (or similar terms).

Should Ex-Trade, due to events outside the control of Ex-Trade, be prevented from performing the duties and services towards the members including towards a buyer member and/or a seller member, Ex-Trade shall have no liability towards the seller member and/or buyer member and none of them can make a claim against Ex-Trade. Events outside the control of Ex-Trade are inter alia, but are not limited to, force majeure.

Any dispute between Ex-Trade and a member in relation to a trade agreement entered into with Ex-Trade as the middleman buyer and/or the middleman seller shall be decided by the Trade Rules and Arbitration Committee in Aarhus, Denmark according to Danish law in the first instance pursuant to art. 22.2 of the Articles of Association of Ex-Trade A.m.b.a.

## **2.4 Seller's responsibility**

As soon as the consignment has been accepted by the buyer member, the seller member can invoice Ex-Trade as the middleman for the eggs at the trade price less any fees that have been agreed with the buyer member. A copy of the signed delivery note must be included with the invoice to Ex-Trade to ensure prompt payment. Ex-Trade's records shall be the final basis for settlement.

## **2.5 Retention of title**

Any and all trade agreements and delivery of products between Ex-Trade and a buyer member shall be subject to retention of title and the products shall accordingly remain the property of Ex-Trade, until payment has been made in full of all claims pertaining to the business relation with the buyer member. The retention of title shall apply regardless of whether Ex-Trade has explicitly referred thereto or not.

### *Special Retention of title for products to be delivered in Germany*

As soon as the products reach the territory of Germany, the special retention of title for products to be delivered in Germany, as set out below shall apply. Ex-Trade and the buyer member explicitly agree a split choice of law with reference to article 27(1)(3) of EGBGB. The trade agreement will be subject to Danish law, but as soon as the products reach the territory of Germany the retention of title set out below shall be subject to German law (including in relation to validity, interpretation and extent). The provisions of The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Any disputes relating to the retention of title clauses set out below, shall be settled at the city court of Hamburg.

The products delivered by Ex-Trade shall remain the property of Ex-Trade, until payment has been made in full of all claims pertaining to the business relation with buyer member.

1. The items pertaining to the supplies ("Retained Goods") shall remain Ex-Trade's property until each and every claim Ex-Trade has against the buyer member on account of the business relationship has been fulfilled. If the combined value of Ex-Trade's security interests exceeds the value of all secured claims by more than 20 %, Ex-Trade shall release a corresponding part of the security interest if so requested by the buyer member; Ex-Trade shall be entitled to choose which security interest it wishes to release.

2. For the duration of the retention of title, the buyer member may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

3. Should Buyer member resell Retained Goods, it assigns to Ex-Trade, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, buyer member shall assign to Ex-Trade such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by Ex-Trade.

4.a) Buyer member may process, amalgamate or combine Retained Goods with other items. Processing is made for Ex-Trade. Buyer member shall store the new item thus created for Ex-Trade, exercising the due care of a diligent business person. The new items are considered as Retained Goods.

b) Already today, Ex-Trade and buyer member agree that if Retained Goods are combined or amalgamated with other items that are not the property of Ex-Trade, Ex-Trade shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods.

c) The provisions on the assignment of claims according to No. 3 above shall also apply to the new item. The assignment, however, shall only apply to the amount corresponding to the value invoiced by Ex-Trade for the Retained Goods that have been processed, combined or amalgamated.

5. Until further notice, buyer member may collect assigned claims relating to the resale. Ex-Trade is entitled to withdraw buyer member's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for over-indebtedness or pending insolvency of buyer member. In addition, Ex-Trade may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that the buyer member informs its customer of the assignment.

6. The buyer member shall inform Ex-Trade forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, buyer member shall, without undue delay, provide Ex-Trade with the information and/or documents necessary to assert the claims it has against its customers.

7. Where the buyer member fails to fulfil its duties, fails to make payment due, or otherwise violates its obligations Ex-Trade shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by Ex-Trade; the statutory provisions providing that a remedy period is not needed shall be unaffected. The buyer member shall be obliged to return the Retained Goods. The fact that Ex-Trade takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless Ex-Trade so expressly declares.

## **2.6 Buyer's responsibility**

The buyer member shall make payment directly to Ex-Trade as the middleman within twenty-five (25) days of receiving the consignment.

Only those adjustments agreed to by the buyer member and seller member which have been reported to Ex-Trade by the seller member may be deducted from the buyer member's payment to Ex-Trade. Any other deduction will be invoiced back to the buyer member. Payment must be made by the buyer member to Ex-Trade, in full and on time, even if a claim has been advanced by the buyer member and/or a dispute has been brought before the Trade Rules and Arbitration Committee by the buyer member, the seller member or Ex-Trade.

## **2.7 Guaranteed payment for eggs**

Ex-Trade will transfer payment to the seller member within thirty (30) days of acceptance of the consignment by the buyer member. The service charge will be set-off against the payment according to the forwarded note to seller member from Ex-Trade. If the seller member is in default with payments to Ex-Trade of membership dues or of eggs from previous due egg purchases, the payment shall be set off against the amount owed to Ex-Trade, and the remainder, if any, will be transferred, or the balance due will be invoiced on the 31st day. Ex-Trade will notify the seller member of any deductions.

Egg payments to members, who are three months or more in arrears with payments of their membership dues, will not be transferred until full payment of the overdue amount is received.

Ex-Trade reserves the right to adapt the payment terms of a member who is in arrears with payment and/or who have a history of being in arrears with payment. The date of transfer will be used to determine a member's payment history. Ex-Trade reserves the right to withhold payments due to the seller member until correct documentation has been received.

## **2.8 Late payment penalty**

A penalty of 5 percent of the due amount per annum shall be charged to the buyer if payment is not made to Ex-Trade within twenty-five (25) days of the date of acceptance. If, after due notice, payment is not made within forty (40) days, a penalty of 7 percent per annum may be charged.

The date the transfer is made from the buyer member's bank shall be used to determine the date of payment. Immediate steps will be taken to collect the outstanding account, and trading privileges will be suspended until the account and all penalties are paid in full. However, the member may sell a consignment of eggs of comparable value, and the payment will be set off against the amount owed to Ex-Trade.

## **2.9 Monthly Membership Dues**

Ex-Trade charges each member a contribution (membership fee) of EUR 100.00 per month, plus EUR 20.00 per month for each branch. Assessments may be paid monthly, quarterly, biannually or annually, as stipulated by the member, and will be invoiced accordingly.

The non-payment of dues or assessments for ninety (90) days will result in the suspension of membership privileges, which include trading.

## **2.10 Service Charges**

Ex-Trade will send an invoice for the service charge to the buyer member and the seller member. Ex-Trade will deduct the amount when settling the seller member's invoice. The buyer member must pay the invoice for the service charge together with the payment of the invoice for the goods.

1. For trading with shell eggs, liquid and frozen egg products, both the seller member and the buyer member are charged for each trade a service charge of EUR 0.0050 per kg eggs if a trade is concluded by weight, or EUR 0.031 per 100 eggs if a trade is concluded by pieces. If more than four trades are done in one time (contract) then the charges are only EUR 0.0040 per kg or EUR 0.025 per 100.
2. For trading with dried egg products, both the seller member and the buyer member are charged for each trade a service charge of 0.5 % of the value invoiced by Ex-Trade excl. VAT (minimum EUR 50 - maximum EUR 150).
3. A fee of EUR 20.00 per trade is charged to the seller member and the buyer member to cover Ex-Trade's credit insurance coverage.
4. A fee of EUR 8.00 per trade is charged to the seller member and the buyer member to cover Ex-Trade's transport risk. If Ex-Trade is not handling the transport, this allowance does not apply.

## **2.11 Claims procedure**

If upon immediate arrival of a delivery the buyer member has a claim regarding the delivered goods, such claim must, without delay (preferably during unloading), be notified to Ex-Trade giving full details of the claim. Immediately thereafter, Ex-Trade will inform the seller member.

With Ex-Trade as mediator an amicable solution is sought. If an amicable solution cannot be achieved, Ex-Trade will, as quickly as possible, organize an investigation through a third party (surveyor). Unless otherwise agreed, the costs for this investigation must be paid by the defaulting party.

Within 2 working days after the justified rejection and or the result of the investigation is presented, the seller member has the obligation and/or right to deliver a replacement delivery.

The above mentioned does not exclude the buyer member from, within a reasonable time after delivery, to present a claim for hidden errors and omissions. The buyer member must supply the documentation for such claims and Ex-Trade may have the right to organize an investigation (surveyor) at the cost of the defaulting party.

As long as a claim is outstanding, the buyer member must not use the goods and must secure a safe storage of the goods.

It is not allowed for a member to withhold any payments to Ex-Trade even if a claim/dispute exists in relation to a given delivery. All payments must be made on time and in full.

All members are urged to follow these procedures and to continue to act in good faith if a problem arises. The Ex-Trade staff will do their best to arrive at a satisfactory solution of any problem that arises. Where settlement is not possible, the member shall present the dispute to the Trade Rules and Arbitration



Committee for a first instance decision as set out in art. 22.2 of the Articles of Association of Ex-Trade A.m.b.a.

All contact and negotiations between a buyer member and a seller member must either be conducted through Ex-Trade or if conducted directly between the buyer member and the seller member, Ex-Trade must be kept informed about the negotiations.

## **2.12 Dissemination of trading results**

Whether they have traded or not, members interested in information about current trades can have details from Ex-Trade's web-site, by fax or telephone. The receipt of current information by fax is dependent on a separate agreement.

As Ex-Trade is a membership organisation, the dissemination of information about current trades to non-members is not permitted. Ex-Trade holds an exclusive copyright for all trading details and trading reports, and redistribution of these trading details and reports is an infringement of the trade rules and/or of applicable copyright laws.

## **2.13 Failure to comply with the trading rules**

Failure to comply with Ex-Trade's trading rules or to abide by generally accepted trading practices and procedures on the part of either the buyer member or the seller member should be reported to Ex-Trade. Reports will be reviewed and appropriate action taken to discourage continuation. Members assume the responsibility of limiting the number of bids and offers to their ability to meet all trading requirements. Failure to comply may form the basis for suspension of the right of an individual or company to trade through Ex-Trade.

Collusion between a buyer member and a seller member to circumvent an actual exchange of eggs and/or egg products according to Ex-Trade rules is strictly prohibited.

## **2.14 Penalty policies**

If a buyer member or seller member does not meet the agreed conditions for a transaction or comply with the trading rules, Ex-Trade may at Ex-Trade's discretion impose a discretionary fine. A member may bring a dispute regarding a discretionary fine and/or other penalties before the Trade Rules and Arbitration Committee.

Penalties and adjustments may be waived by the party entitled to such penalties and/or adjustments. Penalties can be, and frequently are, waived out of mutual consideration for members who consider the Golden Rule to be more important than the temporary gain from a penalty rule. Ex-Trade must be notified of any waiver of penalties and/or adjustments and any settlement made between the buyer member and the seller member.