

# EGGLESTON BROS. LIMITED

## STANDARD CONDITIONS OF SALE

### 1. DEFINITION

"Company"	Means Eggleston Bros. Limited and/or any subsidiary Company.
"Buyer"	Means the Individual, Individuals, Firm, Company or other party with whom the Company contracts or with whom the Company agrees to contract.
"Goods"	Means Goods, Articles and Materials to be supplied by the Company under the terms of any agreement with the Buyer.
"Price"	Means the price for the Goods inclusive of the cost of packing materials (which shall be non-returnable unless specified to the contrary) but exclusive of the cost of carriage and exclusive of Value Added Tax.

### 2. APPLICATION AND VARIATIONS OF CONDITIONS

These Conditions shall apply to all contracts for the sale of Goods by the Company to the Buyer to the exclusion of all other Terms and Conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document. These Conditions cannot be varied without the prior written agreement of the Company stating the variation or variations and referring expressly to the condition which is to be varied.

### 3. THE PRICE AND TERMS OF PAYMENT

Unless a fixed price has been expressly agreed by the Company the price payable by the Buyer shall be the Company's price prevailing at the date of despatch. Any delivery charge, which the Company shall be entitled to make if the Company is to deliver the Goods to the Buyer shall be payable in addition to the Price either at the rate or in the amount agreed between the Company and the Buyer or at the Company's tariff of delivery charges applicable at the time that each delivery of Goods is made to the Buyer.

Unless the Company otherwise agrees in writing the Price for the Goods shall be paid in full not later than the last day of the month following the month of delivery or supply of the Goods and in the case of Goods which shall be delivered or supplied by instalments payment in full for each instalment shall be made no later than the last day of the month following the month of supply or delivery of each instalment unless the Company agrees otherwise in writing. Any payment not made within such time limit shall be deemed to be overdue and the Company shall be entitled to charge interest on all overdue sums at the rate of 5% above the base rate of National Westminster Bank plc from time to time in force calculated from the day when payment became due and thereafter from day to day until the date of payment and shall accrue at such rate after as well as before any judgment.

Time for payment shall be of the essence.

If the Buyer fails to make any payment on or before the due date then without prejudice to any of the Company's other rights the Company may suspend or cancel any future deliveries to the Buyer in accordance with Condition 14 hereof and/or appropriate any payment made by the Buyer for such of the Goods (or goods supplied under any other contract with the Buyer) as the Company may in its sole discretion think fit.

The Buyer shall not be entitled to set off as against any monies due to the Company any amount claimed by or due to the Buyer by the Company howsoever arising unless the Company shall agree otherwise in writing.

### 4. DELIVERY

Delivery of the Goods shall be made to the Buyer's address as shown on the Company's Advice Note. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Buyer refuses to accept delivery of any consignment of the Goods, for whatever reason, the Company has the right to make an additional charge to cover the extra cost caused by the refusal. If delivery is to be made to premises other than the Buyer's address sufficient delivery shall be deemed to have been made by the delivery of the Goods to such premises and on the Company's Advice Note being receipted by someone in apparent authority at such premises whether or not that person has the actual authority of the Buyer to acknowledge delivery.

Dates or periods quoted for delivery are approximate only. They are given for information only and time shall not be of the essence in relation thereto. Failure by the Company to comply with any such dates or periods shall not constitute a breach of contract and shall not entitle the Buyer to treat the contract as terminated or to any other remedy against the Company.

### 5. RISK

The Goods shall be at the Buyer's risk as from delivery defined as in Condition 4 of these conditions.

### 6. TITLE

Notwithstanding delivery having been made and the risk in the Goods having passed to the Buyer the property in the Goods shall not pass from the Company until the Buyer shall have paid the Price and all additional charges (if any) plus VAT in full and no other sums whatever shall be due from the Buyer to the Company.

Until the property in the Goods passes to the Buyer in accordance with this condition the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Buyer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that the Goods are clearly identified as the property of the Company. Notwithstanding that the Goods (or any of them) remain the property of the Company the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at the full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Company the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money. The Company shall be entitled to recover the price plus VAT in full notwithstanding that property in any of the Goods has not passed from the Company. Until such time as property in the Goods passes from the Company the Buyer shall upon request deliver up such of the Goods as have not been re-sold or cease to be in existence to the Company. If the Buyer fails to do so the Company may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer to sell or use the Goods in accordance with this clause shall cease. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Buyer does so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable. The Buyer shall insure the Goods and keep them so insured to the full price against "all risks" to the reasonable satisfaction of the Company until the date that property in the Goods passes to the Buyer and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company if the Buyer fails to do so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable. The Buyer shall within 21 days of delivery (as defined in these conditions) deliver the prescribed particulars of this contract to the Registrar of Companies in accordance with Part XII of The Companies Act 1985 as amended and without prejudice to the other rights of the Company. If the Buyer fails to do so all sums whatever owing by the Buyer to the Company shall forthwith become due and payable.

## 7. TERMINATION

The Company shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any or every contract between itself and the Buyer or to suspend any further deliveries under any or every such contract in any of the following events:

- (a) If any debt is due and payable by the Buyer to the Company but is unpaid.
- (b) If the Buyer has failed to take delivery of any goods under any contract between it and the Company otherwise than in accordance with the Buyer's contractual rights.
- (c) If the Buyer becomes insolvent or enters into any composition or arrangement (including a voluntary arrangement) with his creditors or being a body corporate has passed a resolution for voluntary winding up except where solely for the purpose of amalgamation or reconstruction or if a petition has been presented for an order for its winding up or for a receiver (including an administrative receiver) or administrator to be appointed or if any such order or appointment is made or, if being an individual or partnership, the Buyer suspends payments of his or their debts in whole or in part or if an application has been made for an interim order or a petition has been presented for a bankruptcy order or if any such order is made or if the Buyer whether or not a body corporate shall carry out or be subject to any analogous act or proceedings under foreign law.

And further in each such case and for the avoidance of doubt the Company shall be entitled in accordance with the provisions of Clause 6 hereof to enter upon any premises owned occupied or controlled by the Buyer where any Goods to which title has not passed are situated and repossess the same without prejudice to any other rights of the Company.

## 8. LIEN

Without prejudice to any other rights of the Company, the Company shall in respect of all debts due and payable by the Buyer to the Company have a general lien on all goods and property belonging to the Buyer in its possession (whether worked on or not) and shall be entitled upon the expiration of fourteen days notice to the Buyer, to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

## 9. ACCEPTANCE

The Buyer shall be deemed to have accepted the Goods and it shall be conclusively agreed that the Goods are in accordance with the contract unless:

- (a) Within seven days after receipt of the Goods the Buyer serves on the Company a written notice specifying the alleged defect in the quality or state of the Goods which would be apparent upon careful inspection or by such testing as it is reasonable in all the circumstances for the Buyer to undertake and thereafter provides the Company with a reasonable opportunity of inspecting or testing the Goods and retaking the same before any making good or replacement is undertaken.
- (b) If the alleged defect in the quality or state of the Goods would not be apparent upon careful inspection or reasonable testing the Buyer serves on the Company written notice of such defect forthwith upon its discovery and, in any event, not more than six months after receipt of the goods specifying the matters complained of and affording the Company a reasonable opportunity of inspecting the Goods and retaking the same before any making good or replacement is undertaken.

Provided that in either of the above cases if, after notice of any defect has been served by the Buyer upon the Company, the Buyer deals with the Goods as owner (including but without prejudice to the generality of the foregoing sells charges or commences any manufacturing process using the Goods) then the Buyer shall be deemed to have accepted the Goods and be bound to pay the Price.

## 10. DEFECTIVE GOODS

Provided that the Buyer has complied with Condition 9 of these conditions and subject to the provisions of Condition 11 hereof, if the goods or any part thereof are defective in quality or state or (except for any discrepancy in weight or quantity) otherwise not in accordance with the contract then if the Company and the Buyer do not agree that the Buyer shall accept the Goods at an agreed value or that the Goods should be made good at the Company's expense, the Company will accept the return of the Goods by the Buyer and at the Buyer's option either:

- (a) Repay or allow the Buyer the invoice price thereof and any reasonable costs incurred by the Buyer for the purpose of transporting the goods back to the Company or
- (b) Replace the Goods by delivering replacement Goods as soon as reasonably practicable and in all respects in accordance with the contract.

The obligations of the Company under this condition are in substitution for any other legal remedy of the Buyer and the liability of the Company shall for all purposes be limited to the cost of making good, the giving of any appropriate credit or repayment, or the replacement of the Goods in accordance with this condition. Under no circumstances shall the Company be liable for any other loss damage or expense occasioned by any breach of contract negligence or breach of any duty of the Company whatsoever and howsoever such loss or damage or expense may have been caused. The Company shall not be liable for any loss or damage the Buyer may suffer by reason of its use or sale of the goods after the Buyer has become aware of a defect therein or ought in all the circumstances to have become so aware.

Where processing of the Goods has been carried out by a third party, the Company's liability is limited to the processors warranty as to the process or the effect of the process may have had on the Goods themselves.

In no circumstances will the Company be responsible for loss or damage beyond that expressly referred to in this clause and in particular liability for any form of consequential loss is excluded.

Provided that Condition 10 shall not be deemed to exclude or limit the liability of the Company in respect of death or personal injury resulting from the negligence of the Company its servants or agents or purport to limit or exclude the rights of the Buyer under the Unfair Contract Terms Act 1977 or exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979 or (where applicable) Sections 13, 14 and 15 of the said Act.

## 11. "NON PRIME" OR "STOCK PIECE" GOODS

Goods sold as "Non Prime" or "Stock Pieces" or goods accepted by the Buyer at an agreed value in accordance with Condition 11 of these conditions (which the Company and the Buyer agree to be "Non Prime" goods) are sold in their actual state, as seen, without warranty and with all faults whether or not the Goods have been inspected by the Buyer prior to delivery. Any statement or specification description or other information provided by the Company in respect of such goods is given in good faith but the Company can accept no responsibility for its accuracy. In no circumstances will the Company be under any obligation to replace or make good such goods or entertain any claim whatsoever in respect thereof and the Buyer shall indemnify the Company

against all claims made against it and all losses liabilities costs and expenses consequent thereon which arise out of loss or damage to property or injury to or death of any person caused or alleged to be caused by or consequent upon the supply of a product (as defined in Section 1 of The Consumer Protection Act 1987) to the Buyer as "Non Prime" or to any third party by the Buyer which comprises "Non Prime" goods sold to the Buyer by the Company or which has as a component or components or includes or is otherwise manufactured from any "Non Prime" goods supplied by the Company whether or not such claim is made pursuant to the said Act. If the Buyer shall re-sell such goods the Buyer shall ensure that a provision in similar form to this condition is incorporated in the contract for such re-sale unless prior to re-selling such goods the Buyer has caused the goods or such part thereof as the Buyer re-sells to comply with a recognised specification or standard and in this condition the term "Non Prime" shall be construed as referring to both "Non Prime" and "Stock Piece" goods.

## 12. STANDARDS

The Goods will be supplied within the tolerances stated in the current British European or International Standard for the appropriate product, where such a standard exists, unless it has been expressly agreed otherwise, in writing by the Buyer. Any condition warranty or undertaking as to the fitness or suitability of the goods for any purpose known by the Company but which may be implied by custom of the trade or by statute or otherwise is hereby excluded and any statement in a British European or International Standard as to suitability of the Goods for any purpose shall give rise to no legal liability on the part of the Company.

## 13. TEST CERTIFICATES

If the Buyer so requests the Company will supply a Test Certificate for the Goods at the Buyer's expense. All Test Certificates will be supplied by the Company in good faith but the Company shall not be responsible for any errors therein resulting from errors in information supplied to the Company by third parties.

## 14. INSTALMENT AND PERIODIC DELIVERIES

Where the Goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (mutatis mutandis) and no default in respect of any one instalment shall effect or prejudice due performance of the Contract as regards any other instalments provided that if the Buyer shall fail to pay for any instalment within the time for payment set out in Condition 3 hereof then the Company shall be entitled following service by it on the Buyer of fourteen days written notice of its intention so to do (or shorter notice in the event that the due date for delivery of the next instalment is less than fourteen days distant) suspend further deliveries pending payment without prejudice to any other remedy available to the Company.

Where goods are to be supplied or delivered by the Company in accordance with periodic delivery schedules or similar notification of the delivery requirements of the Buyer the Buyer shall not be entitled to cancel or to vary any such requirement without prior written consent of the Company when the Company shall be entitled to reimbursement of any additional costs or expenses incurred or suffered as a result of such cancellation or variation.

## 15. HEALTH AND SAFETY

The attention of the Buyer is drawn to the provisions of Section 6 of The Health and Safety at Work etc. Act 1974. The Company will make available upon written request such information on the design construction and installation of the Goods as is in its possession to ensure that so far as is reasonably practicable they are safe and without risk to health when properly used.

## 16. SEVERANCE

Any provision of these Conditions which is or may become illegal void or unenforceable shall to the extent of such illegality invalidity or unenforceability be deemed severable and shall not affect any other provision of these Conditions.

## 17. WAIVER

The rights of the Company and the Buyer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

## 18. ASSIGNMENT

Any contract between the Company and the Buyer shall not be assigned by the Buyer to any third party without the prior written consent of the Company.

## 19. FORCE MAJEURE

Notwithstanding any variation of Condition 4 in accordance with Condition 2 the Company shall not be liable for delay in delivery or failure to make delivery of any goods due to force majeure including, but without prejudice to the generality of the foregoing, war rebellion revolution strikes lock-outs breakdown of plant or governmental or other regulations rules laws or decrees fire flood drought tempest or other event beyond the reasonable control of the Company.

## 20. NOTICES

Any notice authorised or required to be given pursuant to these Conditions shall in the case of a notice to the Company be sent to it at its Registered Office and shall in the case of a notice to the Buyer be sent to the Buyer at its Registered Office if the Buyer is a Company and in any other case to the address of the Buyer last known to the Company. Any such notice may be given by hand or by post. To prove service in the case of a notice given by post it shall be sufficient to show that the notice was despatched by first class recorded delivery service in a correctly addressed and adequately stamped envelope. Service shall be deemed to have been effected 24 hours after despatch by post.

## 21. PROPER LAW AND JURISDICTION

These conditions and each and every contract made pursuant thereto shall be governed by and construed in all respects and in accordance with the Laws of England and the Company and the Buyer irrevocably submit to the exclusive jurisdiction of the English Courts.