

# HEART OF ENGLAND FARMS

## CONDITIONS OF SALE

### 1. INTERPRETATION

1.1. In these Conditions the following words shall bear the following meanings:-

“the Buyer” means the person purchasing the Goods.

“**Contract**” means each contract for the sale and purchase of the Goods entered into between the Seller and the Buyer in accordance with Condition 2.

“**Goods**” means pheasantry, partridges, and any other fowl/poultry, of any age including the eggs of all or any of them.

“**Seller**” means the person named in the documentation as the supplier of Goods.

“**writing**” does include email.

1.2. Any reference in these conditions to any provision of statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2. BASIS OF THE SALE

2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation, written or otherwise, of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted, or an order is purported to be made, by the Buyer.

2.2. The Seller only sells to consumers by exception. By entering the Contract the Buyer agrees that it is doing so in a business capacity and not purchasing as a consumer unless the Seller has agreed otherwise in writing. Where a Buyer is purchasing on behalf of a syndicate or club, this is considered a business purchase.

2.3. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.4. The Seller’s employees or agents are not authorised to make any representations (subject to clause 9.1.2) concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. **ORDERS AND SPECIFICATIONS**

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by the Seller's authorised representative by way of a signed written order confirmation.
- 3.2. The quantity and description of the Goods shall be those set out in the Seller's written order confirmation.
- 3.3. If hatching eggs and/or day old chicks are ordered by the Buyer, the Seller shall supply such additional number of hatching eggs and/or day old chicks as equals (as near as may be) 2% of the numbers ordered by the Buyer free of charge.
- 3.4. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

### 4. **PRICE OF THE GOODS**

- 4.1. Subject to clause 4.2, the price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of the order. All prices quoted are valid for 14 days, after which time they may be altered by the Seller without giving notice to the Buyer. The total price shall be confirmed in the Seller's written order confirmation.
- 4.2. The Seller may amend the price of the Goods where the costs to the Seller increase as a result of an event or factor which is outside of the control of the Seller (including the acts or omissions of the Buyer) or a change in law or regulation. The Seller shall notify the Buyer of any such increase in writing prior to delivery.
- 4.3. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 4.4. The price of the Goods is inclusive of the costs and charges for transport of the Goods. Additional services may be available at the prices as set out in the Seller's published price list current at the date of the order.
- 4.5. The price of the Goods is exclusive of the costs and charges for vaccinations.

### 5. **TERMS OF PAYMENT**

- 5.1. Subject to any special terms or any deposit requirement agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2. The Buyer shall pay the price of the Goods, without any deduction, within thirty (30) days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Receipts for payment will be issued only upon request.
- 5.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - 5.3.1. cancel the contract or suspend any further deliveries to the Buyer;

- 5.3.2. appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3. charge the Buyer interest on the overdue amount at the rate of 8% per annum above the Barclays Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

## 6. DELIVERY

- 6.1. The Goods are to be delivered to or made available for collection at the place agreed in writing (the "**Delivery Location**") by the Buyer. The Buyer shall ensure that someone is present at the Delivery Location to take delivery of or collect the Goods and to sign for the Goods.
- 6.2. Delivery of the Goods shall be completed on the Goods arrival at the Delivery Location. Where the Seller:
  - 6.2.1. delivers the Goods, it shall be the responsibility of the Buyer to unload the Goods; or
  - 6.2.2. makes the Goods available for collection, it shall be the responsibility of the Buyer to load the Goods.
- 6.3. Where required by the Seller, the Buyer shall immediately return any crates or other delivery or transportation materials.
- 6.4. Where the Goods are to be delivered or made available for collection in instalments, each instalment shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5. The Seller shall accept no liability (including any liability for negligence) for any damage or loss arising from delay or failure to deliver Goods for any reason whatsoever. Any dates quoted for delivery are approximately only, and time of delivery is not of the essence.
- 6.6. If the Buyer fails to take delivery of the Goods at the time and on day of delivery as agreed between the parties in writing, or fails to give the Seller adequate delivery instructions at the time stated for delivery otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault then, without prejudice to any other right or remedy available to the Seller, the Seller may:
  - 6.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage, labour and foodstuffs; and/or
  - 6.6.2. sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7. RISK AND PROPERTY

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 7.1.1. in the case of Goods to be delivered at the Buyer's premises, at the time of delivery; or

- 7.1.2. if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.
- 7.4. Until such time as the property in the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

## 8. WARRANTIES AND CLAIMS

- 8.1. Subject to the conditions set out below the Seller warrants that the Goods will, at the time of delivery, correspond with their description as set out in the Seller's written order confirmation.
- 8.2. Whilst every effort is made to ensure that the quality of Goods delivered is as is ordered, the warranty in Condition 8.1 is given by the Seller subject to the following conditions:
- 8.2.1. the Seller shall be under no liability in respect of any disease or infection in the Goods howsoever arising;
- 8.2.2. the Seller shall be under no liability for any outbreak of disease amongst the existing fowl (including but without limitation pheasants, partridges, quail, ducks and guinea fowl of any age) owned by the Buyer which is attributed to all or any of the Goods sold by the Seller to the Buyer;
- 8.2.3. the Seller shall be under no liability in respect of any reduction in the quality or quantity of the Goods arising from a failure to follow the Seller's instructions (whether oral or in writing), or delivery delayed by the Buyer or as a result of poor weather conditions whilst the Goods are in transit to the place requested for delivery by the Buyer; and
- 8.2.4. the Seller shall be under no liability in respect of any veterinary bills incurred by the Buyer for the Goods unless otherwise agreed in writing by the Seller.
- 8.3. The Seller shall be under no liability, where the Goods include hatching eggs, if all or any of such Goods fail to hatch or where the Goods include day old chicks, if all or any of such Goods perish. The Buyer acknowledges that the obligation to supply of an additional 2% of Goods as set out in Condition 3.3 is the Seller's entire liability in respect of the same.
- 8.4. The Seller shall be under no liability in the event of the Buyer setting Goods which are eggs or causing such eggs to be set in an incubator which shall be undertaken entirely at the Buyer's own risk.
- 8.5. Any claim by the Buyer which is based on any defect in the quantity or condition of the Goods or their failure to correspond with their description shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 24 hours from the date of delivery. Where any such claim is made, the Buyer must, where required by the Seller, permit the Seller's nominated vet to examine the Goods immediately. The Buyer acknowledges that, given the nature of the Goods

and the difficulty in identification of the cause of issues beyond this period, such limitations and requirements are reasonable.

- 8.6. If the Buyer does not notify the Seller for any claim in accordance with Condition 8.5, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.7. Where any valid claim in respect of any of the Goods is made in accordance with Condition 8.5, the Seller shall be entitled to replace the Goods (or such of them in question) at the Seller's next reasonable available opportunity free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), and the Seller shall have no further liability to the Buyer in respect of such claim.
- 8.8. These Conditions shall apply to any replacement Goods supplied by the Seller.

**9. LIABILITY – PLEASE READ THIS CLAUSE CAREFULLY**

- 9.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:
  - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 9.1.2. fraud or fraudulent misrepresentation;
  - 9.1.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 9.1.4. defective products under the Consumer Protection Act 1987; or
  - 9.1.5. any other liability which cannot be excluded by law.
- 9.2. Subject to clause 9.1:
  - 9.2.1. the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 9.2.2. the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
- 9.3. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by the statute or common law are excluded to the fullest extent permitted by law.
- 9.4. Where the Goods are sold under a consumer transaction (as defined by the Consumer Rights Act 2015) the statutory rights of the Buyer are not affected by these Conditions.

**10. EVENTS OUTSIDE OF THE SELLER'S CONTROL**

- 10.1. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due

to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;

- 10.1.1. act of God, explosion, flood, tempest, fire or accident;
- 10.1.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 10.1.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any statutory body, governmental department or agency or local authority or other body having jurisdiction over the activities of the Seller (including in particular any such as relate to the movement or sale of birds);
- 10.1.4. import or export regulations or embargoes;
- 10.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 10.1.6. difficulties in obtaining the Goods, labour or fuel;
- 10.1.7. power failure or breakdown of machinery.

10.2. Where the Seller is hindered or prevented by reason of any of the circumstances mentioned in Clause 10 from performing its obligations in relation to the Goods, the Seller shall have the right to:-

- 10.2.1. extend the time or date for delivery by such periods as the Seller in its absolute discretion shall consider reasonable; and
- 10.2.2. rescind the Contract or deliver such smaller quantity of Goods as the Seller shall consider reasonable, the Buyer paying for such Goods delivered at the contractual price per item without being liable for any loss or damage thereby caused.

## 11. **INSOLVENCY OF BUYER**

11.1. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:

- 11.1.1. the Buyer (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things;
- 11.1.2. the Buyer (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business or, the Buyer (being a partnership), has a partner to whom is subject to any of the foregoing events; or
- 11.1.3. the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business,

(each an "**Insolvency Event**").

11.2. Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to an Insolvency Event, or the Seller

reasonably believes that the Buyer is about to become subject to an Insolvency Event, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

11.3. On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and any applicable interest.

11.4. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

11.5. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect, including, without limitation, Conditions 7.2, 7.3, 7.4, 9, 12 and 13.

## **12. INTELLECTUAL PROPERTY**

12.1. The Buyer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of the Seller or (as the case may be) the third party rights owner.

12.2. The Seller may inform third parties that it provides or has provided the Goods to the Buyer. The Buyer licenses the Seller to use its name and logo(s) for this sole purpose.

## **13. GENERAL**

13.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the parties address referred to in clause 13.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13.3. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these Conditions and the remainder of the provision in question shall not be affected thereby.

13.5. These Conditions constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.6. A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7. The Contract and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the court of England and Wales in respect of any dispute or claim arising out of or in connection with the Contract (including non-contractual disputes or claims).