



**HINCHLIFFE'S**<sup>®</sup>

PULLET REARERS  
EST. 1929

## TERMS AND CONDITIONS FOR THE SALE OF PULLETS

### DEFINITIONS:

#### 1.1 In these Conditions:

**BUYER** means the person, firm, business or company who accepts a quotation of the Seller for the sale of the Poultry or whose order for the Poultry is accepted by the Seller.

**POLTRY** mean the poultry (including any instalment) which the Seller has agreed to supply in accordance with these Conditions.

**SELLER** means Hinchliffe Partnership LLP T/A Hinchliffes Pullet Rearers of Sunnyside Farm Netherton Moor Road, Netherton, Huddersfield, West Yorkshire, HD4 7LE, company number OC 358101.

**CONDITIONS** means the standard terms and conditions of sale set out in this document and (unless the content otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

**CONTRACT** means the contract for the purchase and sale of the Poultry between the Seller and Buyer, incorporating the Conditions.

**DELIVERY POINT** means the place at which delivery is to take place under condition 4.

1.2 Any reference in these Conditions to any provision of a 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.

1.4 In these Conditions, words denoting the singular shall include the plural and vice versa: words denoting any gender shall include all genders, and words denoting persons shall include bodies corporate, partnerships and individuals.

### 2 BASIS OF THE SALE

2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Poultry shall have no effect unless expressly agreed in writing and signed by a director of the Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Poultry by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Poultry subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Poultry to the Buyer.

2.6 Any quotation is given on the basis that no Contract shall come into existence until the Seller dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it.

2.7 The Buyer must complete and return the order confirmation form agreeing acceptance of delivery of the Poultry as detailed in the order confirmation and shall be deemed conclusive evidence of the Buyer's acceptance of the Conditions.

### 3 ORDERS

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Poultry within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of the Poultry and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.3 The Poultry are to be reared by the Seller in accordance with the seller's standard rearing programme or in accordance with a written specification submitted by the Buyer and agreed in writing by the Seller. The Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification. The Seller shall have no liability whatsoever for any loss incurred by the Buyer as a result of the Seller's use or application of such specification.

3.4 The Seller reserves the right to make any changes

in the specification of the Poultry which are required to conform with any applicable statutory or E.U. requirements or, where the Poultry are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except (i) as expressly permitted by these Conditions or (ii) with the written agreement of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

### 4 ORDER CANCELLATION

4.1 The Buyer may not cancel an order within a period of twenty-six weeks prior to the Seller's earliest estimate date of delivery without paying to the Seller (as liquidated damages and not otherwise), a sum equal to the purchase price of such order without any deduction save as below.

4.2 If the Seller is able to resell, or the Buyer is able to procure the resale of, any of the Poultry allocated to the order of the Buyer, credit will be given in respect of the proceeds of such resale in reduction of the liquidated damages referred to in condition 4.1.

4.3 If no re-sale has been effected prior to the date at which the Poultry were due for delivery, the Seller, to avoid additional cost, reserves the right to sell Poultry for slaughter and credit will be given in respect of the proceeds of such sale in reduction of the liquidated damages referred to in condition 4.1.

### 5 DELIVERY

5.1 Delivery of the Poultry shall be made by the Seller delivering the Poultry to the Buyer's nominated premises, or by Buyer collecting the Poultry at the Seller's premises at any time after the Seller has notified the Buyer that the Poultry are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Poultry to that place.

5.2 Any dates specified by the Seller for delivery of the Poultry are intended to be an estimate and time for delivery shall not be made of the essence by notice.

Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Poultry (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 28 days.

5.3 If for any reason the Buyer fails to accept delivery of any of the Poultry when they are ready for delivery, or the Seller is unable to deliver the Poultry on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Poultry shall pass to the Buyer (including for loss or damage caused by the Seller's negligence); (b) the Poultry shall be deemed to have been delivered; and

(c) the Seller may keep the Poultry until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, feed, vaccines, extra delivery costs and insurance).

5.4 The Buyer shall provide at the Delivery Point and at its expense adequate, safe and appropriate access, equipment and labour for unloading the Poultry, as applicable. From a health and safety perspective any assistance given by employees, sub-contractors or others of the Seller shall be at the risk of the Buyer.

5.5 If the Seller delivers to the Buyer a quantity of Poultry of up to 10% more or less than the quantity ordered by the Buyer and accepted by the Seller, the Buyer shall not be entitled to object to or reject the Poultry or any of them by reason of the surplus or shortfall and shall pay for such Poultry at the pro rata Contract rate.

5.6 The Seller may deliver the Poultry by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment. Each instalment will be subject to the same provisions as to tolerances in clause 5.5 but the margin on the mean Contract quantity is not to be affected by the Poultry being delivered in instalments.

5.7 If the Seller fails to deliver the Poultry (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Poultry.

5.8 Any liability of the Seller for non-delivery of the Poultry shall be limited to replacing the Poultry within a reasonable time or issuing a credit note at the pro-rata

Contract Rate against any invoice raised for such Poultry.

### 6 RISK AND PROPERTY

6.1 Risk of damage to or loss of the Poultry shall pass to the Buyer:

(a) in the case of Poultry to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Poultry are available for collection; or (b) in the case of Poultry to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Poultry, the time when the Seller has tendered delivery of the Poultry.

6.2 Notwithstanding delivery and the passing of risk in the Poultry, or any other provision of these Conditions, the property in the Poultry shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of all sums due or owing by the Buyer to the Seller on any account whatsoever.

6.3 Until such time as the property in the Poultry passes to the Buyer, the Buyer shall hold the Poultry as the Seller's fiduciary agent and bailee, and shall keep the Poultry separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

6.4 Until such time as the property in the Poultry passes to the Buyer (and provided the Poultry are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Poultry to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Poultry are stored and repossess the Poultry.

6.5 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness due of the Poultry which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

6.6 The recovery by the Seller of any Poultry from the Buyer under this Condition shall be without prejudice to the rights of the Seller to sue for the sale price.

Furthermore, the Seller may sue for the price of the Poultry even if property in the Poultry has not passed to the Buyer.

6.7 The Buyer grants to the Seller its agents and employees an irrevocable licence at any time to enter any premises where the Poultry are or may be house in order to inspect them or where the Buyer's right to possession has terminated, to recover them.

### 7 PRICE

7.1 Unless otherwise agreed by the Seller in writing, the price for the Poultry shall be the Seller's quoted price subject to condition 7.3 and any feed related clause as agreed in the order confirmation letter.

7.2 The price for the Poultry shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Poultry.

7.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Poultry to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Poultry which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. In particular, without prejudice to the generality of the foregoing, the Seller may adjust the price of the Poultry to reflect:

(a) any increase in the cost to the Seller of feed during the growing period;

(b) any increase in the cost to the Seller of day old chicks;

(c) the cost of any vaccines or medicines as may in the opinion of the Seller be required to protect or treat any pullet during the growing period or as are specified by the Buyer;

(d) any additional costs incurred by the Seller as a result of its observance or compliance with any statutory requirements regulations or directives;

(e) any increase in the cost to the Seller of delivering the Poultry to the Buyer's premises.

(f) any increase due to the Buyer delaying delivery date

(g) any increase in heat, light utilities and insurance costs.

7.4 The price of the Poultry is subject to alteration by reason of the imposition of or alteration by the EU or by the United Kingdom Government in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon goods of this description, whether at the time of or if the change is retrospective at any time after the date of the Contract provided that the change is applicable at the date of delivery.



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### 8 PAYMENT

8.1 Subject to condition 8.4 and unless otherwise agreed in writing by the Seller, payment of the price for the Poultry is due in pounds sterling within 14 days of the Poultry being delivered or deemed to have been delivered.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Seller has received cleared funds.

8.4 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

8.6 If the Buyer fails to pay the Seller any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Seller on such sum from the due date for payment at the rate of 2% per month, accruing on a daily basis until payment is made, whether before or after any judgment.

8.7 Without prejudice to any other rights available to it, the Seller may suspend performance of its obligations under the Contract if the Buyer is in breach of any of its obligations under the Contract or under any other contract with the Seller, including but not limited to the payment of any monies due or owing. The right to suspend shall continue until the breach is remedied in full.

### 9 WARRANTIES

9.1 The Seller warrants that the Poultry will be on the date of delivery or deemed delivery of a satisfactory quality with reasonable health with weights and evenness as set out in the breeder's specifications provided to the Seller, subject to a possible 10% weight loss on delivery.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

### 10 CLAIMS / QUALITY

10.1 Save as is mentioned in this condition in relation to death and sex guarantee the Seller makes no presentation and gives no warranty as to the health and fitness of the Poultry or their potential in terms of laying until first moult any particular quantity of table eggs

10.2 Death in transit where and to the extent that in shipping Poultry the Seller gives a free of charge allowance of Poultry on account of mortality and wrongly sexed day old chicks credit will be given only when and to the extent that mortality and/or wrongly sexed day old chicks exceed such allowance

10.3 Death other than in transit in the event that any of the birds supplied die other than in transit but within fourteen days from the date of their dispatch by the Seller (such date to be date when the birds are accepted by the carrier) the price of the dead birds will be refunded or at the option of the Seller in the case of birds other than those dispatched as day old chicks the dead birds will be replaced by birds of similar age at a time of original delivery, provided always that :-

10.3.1 the Buyer notifies the Seller in writing within 15 days of the date of the date of dispatch as aforesaid the number of dead birds, and identities to the Seller the invoice relating thereto and

10.3.2 the Buyer consigns without undue delay such dead birds under the supervision of the Seller if they so desire to a veterinary surgeon of the Department of Environment Food and Rural Affairs (DEFRA) or as the Buyer may prefer to the Animal Health Trust and

10.3.3 such veterinary surgeon of DEFRA or a responsible official of the Animal Health Trust after conducting a post mortem certifies in writing that the death of the birds was caused by a condition present at the date of dispatch as aforesaid.

10.4 Sex Guarantee. The Seller guarantees not less than 95 pullets in 100. Should it be found that there are more cockerels in the consignment than the numbers referred to above and provided that the Seller is notified when the pullets are between the ages of 10 and 14 weeks then subject to 10.2 the Seller will refund the purchase price of all cockerels in excess of this figure. The Seller reserves the right to request the return of the cockerels for its inspection.

10.5 Subject as aforesaid a claim by the Buyer which is based on any defect in the quality or condition of the Poultry or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within three days after discovery of the defect or failure. The Buyer shall not be entitled to reject the Poultry 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 Poultry had been delivered in accordance with the Contract. Where the Buyer collects the Poultry it is the responsibility of the collector to inspect and accept the Poultry before loading.

10.6 All claims other than those in condition 10.5

above must be notified so as to be received by the Seller within 28 days of arrival of the Poultry at their ultimate destination within the United Kingdom or of their collection by or on behalf of the Buyer.

10.7 The Seller shall not be liable for a breach of any of the warranties in condition 9 or 10 unless:

(a) the Buyer gives written notice of the defect to the Seller in accordance with condition 10; and  
(b) the Seller is given a reasonable opportunity after receiving the notice of examining such Poultry at the Buyer's premises.

10.4 The Seller shall not be liable for a breach of the warranties in condition 9 if

(a) the Buyer makes any further use of such Poultry after giving such notice; or  
(b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage or use of the Poultry or (if there are none) good industry practice.

10.5 Subject to condition 10, if any of the Poultry do not conform with any of the warranties in condition 9, the Seller shall at its option replace such Poultry (or the defective part) or refund the price of such Poultry at the pro rata Contract rate provided that, if the Seller so requests, the Buyer shall, at the Seller's expense, return the Poultry or the part of such Poultry which is defective to the Seller.

10.6 If the Seller complies with condition 10.5 it shall have no further liability for a breach of any of the warranties in condition 9, in respect of such Poultry.

### 11 FORCE MAJEURE

11.1 The Seller shall not be liable or be deemed to be in breach of the Contract or for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, disease, telecommunication or computer system failure, breakdown of plant, machinery or vehicles, lock-outs, strikes or other labour disputes (whether or not relating to the Seller's workforce), restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, or failure or delay of suppliers to the Seller. Where it is possible to do so the Seller shall use its reasonable endeavours to offer suitable alternative goods but shall not be bound to do so at the same price(s) as may be in the Contract.

11.2 Without prejudice to the generality of condition 11.1, in the event that a supplier of chicks to the Seller is unable to fulfil its contracts with the Seller for any reason, the Seller reserves the right to cancel the Contract for the supply of the Poultry to the Buyer (without any liability to the Buyer for so doing).

### 12 LIABILITY

12.1 Subject to condition 4, condition 9 and condition 10, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these Conditions;  
(b) any use made or resale by the Buyer of any of the Poultry, or of any product incorporating any of the Poultry; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

12.2 Subject to condition 9.1 and condition 12.3:

(a) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

(b) the Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12.3 Nothing in these Conditions shall limit the Seller's liability to the Buyer for:

(a) death or injury resulting from the Seller's negligence;  
(b) fraud or fraudulent misrepresentation;  
(c) any matter, liability for which the Seller cannot legally limit or exclude or attempt to limit or exclude.

### 13 VACCINATIONS

13.1 The Seller will where possible at the request and expense of the Buyer permit the vaccination of the Poultry against such diseases as the Buyer reasonably requests by a veterinarian nominated by the Buyer. A full vaccination programme as proposed by the Buyer will be sent by the Seller to the Buyer with the order confirmation.

13.2 No liability is accepted by the Seller in respect of the administration of or failure to administer any vaccine (whether by the Seller or a Buyer-nominated veterinarian), its effect or any other matter relative thereto or in respect

of any loss whether consequential or otherwise which may occur directly or indirectly as a result of a vaccination or failure to vaccinate.

13.3 The Buyer warrants that any vaccines that are administered to the Poultry at the Buyer's direction will be legally prescribed and administered by a validly licensed veterinarian and the Buyer shall indemnify the Seller against any liabilities, claims, losses or damages which result from a breach of such warranty.

### 14 SALMONELLA

14.1 All Poultry supplied by the Seller will have been tested as required under the current legislation or any replacement or amendment thereof and the results of such tests will be made available to the Buyer if requested.

14.2 The Buyer shall be entitled to test the Poultry on delivery only on the basis that swabs are taken from the Poultry as they are removed from the vehicle delivering the Poultry and in the presence of the Seller's representative.

14.3 The Seller shall have no liability to the Buyer for any claims, losses, damages or liability incurred by the Buyer as a result of salmonella infection in the Poultry unless the results of the tests taken by the Seller immediately prior to unloading of the Poultry prove positive for Salmonella Enteritidis or Typhimurium.

### 15 ALTERNATIVE DISPUTE RESOLUTION

15.1 If any dispute arises in connection with the Contract directors or other senior representatives of the parties with authority to settle the dispute will, within 10 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

15.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (the "ADR notice") to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 20 days after the date of the ADR notice.

15.3 Subject to condition 15.4, no party may commence any court proceedings in relation to any dispute arising out of the Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

15.4 Neither party shall be obliged to follow procedures set out above where that party intends (in good faith) to apply to a court for an interlocutory injunction or other equitable remedy against the other. Furthermore, neither party shall be obliged to follow such procedures where it wishes to bring a claim for payment of an undisputed amount which is overdue for payment.

### 16 GENERAL

16.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

16.5 The Seller may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

16.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

16.7 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 principle place of business or such other address as may at the relevant time have been notified pursuant to this condition to the party giving the notice.

16.8 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the jurisdiction of the English courts.