

EVAN REES (BUTTER) LIMITED: TERMS AND CONDITIONS OF SALE OF GOODS AND SUPPLY OF SERVICES

The Customer's attention is in particular drawn to the provisions of condition 11.4.

1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Customer: the person, firm or company who purchases the Goods and/or Services from the Company.

Company: Evan Rees (BUTTER) Limited, (Company number 02371968) Registered address 2 Viking Way, Swansea Enterprise Park, Winchwen, Swansea, SA1 7DA.

Contract: any contract between the Company and the Customer for the sale and purchase of the Goods and/or Services, incorporating these conditions and the Quotation.

Delivery Date: the date specified by the Company for delivery of the Goods and/or Services by the carrier to the Delivery Location.

Delivery Location: the place as noted in the Quotation where delivery of the Goods and/or Services is to take place under condition 4.

Food Legislation: the Food Act 1990, the Food Standards Act 1999, the Food Hygiene (Wales) Regulations 2005, Food Safety (Temperature Control) Regulations 1995.

Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

Services: the services to be provided by the Company under this Contract as set out in the Quotation.

Quotation: means the quote provided to you in accordance with clause 2.4.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. Application of terms

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 Customer 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 Customer'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 Company's sales and any variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by the Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Any Quotation is given on the basis that no Contract shall come into existence until clause 2.7 has been satisfied. Any Quotation is valid for a period of 15 days only from its date, provided that the Company has not previously withdrawn it.

2.5 Each order by the Customer following the issuing of a Quotation for Goods and/or Services from the Company (the "Order") shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these conditions.

2.6 The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.

2.7 No Order placed by the Customer shall be deemed to be accepted by the Company until the Company delivers the Goods and/or commences to perform the Services.

3. Description

3.1 The quantity and description of the Goods and/or Services shall be as set out in the Company's Quotation.

3.2 All samples, descriptive matter and specifications issued by the Company in any form are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services. They shall not form part of the Contract and this is not a sale by sample.

4. Delivery

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

4.2 The Customer shall take delivery of the Goods within two days of the Company giving it notice that the Goods are ready for delivery.

4.3 If agreed in writing between the parties the Company shall deliver the Goods to the Delivery Location by the Delivery Date.

4.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.5 Subject to the other provisions of these conditions the Company 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 Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.6 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions (including but not limited to incomplete or incorrect Delivery Location), documents, licences or authorisations:

4.6.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence) from the time of attempted delivery;

4.6.2 the Goods shall be deemed to have been delivered; and

4.6.3 the Company may store the Goods until actual delivery takes place, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.7 If the Company delivers to the Customer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

5. Non-delivery

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within four (4) days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. Risk/title

6.1 The Goods are at the risk of the Customer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

6.2.1 the Goods; and

6.2.2 all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

6.3.2 store the Goods (at no cost to the Company) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

6.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

6.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

6.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

6.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the grant-ing of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

6.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

6.5.3 the Customer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

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

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.

7. Services

7.1 Subject to clause 7.3 the Company shall use reasonable endeavours to provide the Services in accordance in all material respects with the Quotation.

7.2 The Company shall use reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

7.3 The Customer shall:

7.3.1 delivery to the Company in a timely manner the materials required for the purposes of the Services, such materials being set out in the Quotation;

7.3.2 prior to the Company commencing the Services, ensure that the materials are accurately described in writing to the Company, conform in all respects with all relevant law including all Food Legislation and that that description of the material is consistent with the Company's own tests;

7.3.3 co-operate with the Company in all matters relating to the Services; and

7.3.4 provide, in a timely manner, such information as the Company may request to ensure that the Services are accurate in all material respects.

7.4 The Company reserves the right to refuse to carry out the Services if the materials delivered under clause 7.3 is, in the Company's reasonable opinion, unsuitable for the Services.

7.5 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

7.6 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

8. Price

8.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price set out in the Quotation.

8.2 The price for the Goods and/or Services shall be exclusive of any value added tax, carriage and insurance but inclusive of all costs or charges in relation to packaging, loading, unloading.

8.3 The Company shall be entitled to vary the price as follows:

8.3.1 at any time where performance of its obligations is made more difficult or costly as a result of new legislation or regulations or changes in existing legislation or regulation;

8.3.2 to take into account increases in the Company's operating costs, including without limitation costs arising from increases in fuel prices;

8.3.3 an increase of more than 10% in DEFRA's Average Weekly Market Price index for butter from the date of the Order to the Deliver Date.

9. Payment

9.1 Subject to condition 5, payment of the price for the Goods and/or Services is due in pounds sterling upon placing the order with the Company unless the Customer has entered into a credit arrangement with the Company, where, subject to condition 9.2, payment is due 14 days following the date of the invoice issued by the Company. Any invoice queries should be presented to the Company within 7 days of the date of the invoice.

9.2 Payment for Services delivered is due at the end of the calendar month following the date of invoice issued by the Company. Any invoice queries should be presented to the Company within 7 days of the date of the invoice.

9.3 Time for payment shall be of the essence.

9.4 No payment shall be deemed to have been received until the Company has received cleared funds.

9.5	All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.	15.1.2	(in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
9.6	If the Customer fails to pay the Company any sum due pursuant to the Contract the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.	15.2	Communications shall be deemed to have been received:
9.7	The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.	15.2.1	if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
10. Quality		15.2.2	if delivered by hand, on the day of delivery; or
10.1	Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.	15.2.3	if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
10.2	The Company warrants that (subject to the other provisions of these conditions) upon delivery	15.3	Communications addressed to the Company shall be marked for the attention of the Director.
10.2.1	the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and		
10.2.2	the Services shall be provided using reasonable skill and care.		
10.3	The Company shall not be liable for a breach of the warranty in condition 10.2 unless:		
10.3.1	the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 4 days of the time when the Customer discovers or ought to have discovered the defect; and		
10.3.2	the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.		
10.4	The Company shall not be liable for a breach of the warranty in condition 10.2 if:		
10.4.1	the Customer makes any further use of such Goods after giving such notice; or		
10.4.2	the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, of the Goods or (if there are none) good trade practice; or		
10.4.3	the Customer suffers loss, damages, costs, expenses or other claims for compensation arising from any instruction supplied by the Customer which is incomplete, incorrect, inaccurate or illegible.		
10.5	Subject to condition 10.3 and condition 10.4, if any of the Goods do not conform with the warranty in condition 10.2 the Company shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods which are unsatisfactory to the Company.		
10.6	If the Company complies with condition 10.5 it shall have no further liability for a breach of the warranty in condition 10.2 in respect of such Goods.		
11. LIMITATION OF LIABILITY			
11.1	Subject to condition 4, condition 5 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:		
11.1.1	any breach of these conditions;		
11.1.2	any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods;		
11.1.3	any use may by the Customer of the Services; and		
11.1.4	any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.		
11.2	All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and/or Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.		
11.3	Nothing in these conditions excludes or limits the liability of the Company:		
11.3.1	for death or personal injury caused by the Company's negligence; or		
11.3.2	under section 2(3), Consumer Protection Act 1987; or		
11.3.3	for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or		
11.3.4	for fraud or fraudulent misrepresentation.		
11.4	Subject to condition 11.2 and condition 11.3:		
11.4.1	the Company'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 120% contract price; and		
11.4.2	the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, 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. Assignment			
12.1	The Company may at any time assign, transfer, charge, sub-contract or deal with in any manner with all or any of its rights or obligations under the Contract or any part of it to any person, firm or company.		
12.2	The Customer shall not be entitled to assign, transfer, charge, sub-contract or deal or purport to assign, transfer, charge, sub-contract or deal with any of its rights or obligations under the Contract or any part of it without the prior written consent of the Company.		
13.	Force majeure The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.		
14. General			
14.1	Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.		
14.2	If any provision of these terms is found by any court of administrative body of a competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.		
14.3	Failure or delay by the Company 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.		
14.4	Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.		
14.5	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.		
14.6	The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.		
14.7	The Company has the right to revise and amend these terms and conditions from time to time.		
15. Communications			
15.1	All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:		
15.1.1	(in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or		