

## **Egbert H Taylor & Company Limited**

### **TAYLOR BINS' WEBSITE B2B CONDITIONS OF SALE**

#### **1. General**

- (a) These conditions of sale (the "Conditions") supplied by Egbert H. Taylor & Company Limited (the "Company") to a purchaser (the "Buyer") shall be incorporated into each contract (the "Contract") made by the Company for the sale of the Company's goods (the "Goods").
- (b) The Contract shall consist of these Conditions together with any others set out in the Company's Confirmation of Order or otherwise agreed in writing between Buyer and the Company. For the avoidance of doubt where there are any inconsistencies between these Conditions and those in other documents then such additional expressly agreed terms shall take precedence over these.
- (c) No Conditions or terms of the Buyer shall apply to this Contract. No variation of any of the Conditions shall be effective unless in writing and signed by a duly authorised representative of the Company or sent in an e-mail from the Company's website or e-mail address.
- (d) In these Conditions the words 'in writing' shall include e-mail where the context so admits.

#### **2. Quotations and Acceptance of Orders**

- (a) The contract shall become binding only upon transmission of the Company's Confirmation of Order in writing and accordingly all quotations or tenders made and price or product list supplied by the Company shall be treated as invitations to treat only.
- (b) Subject to clause 5 (b) any quotation by the Company remains open for acceptance for 30 days from the date on which the Company sends the quotation to the buyer unless the quotation specifically refers to an alternative period during which the quotation shall remain valid. The price set out in the Company's Confirmation of Order shall be the price applying to the Contract.
- (c) The placing of an order by the Buyer shall be conclusive evidence that the Buyer has checked the quotation and is fully satisfied that the quotation is in accordance with its requirements.

#### **3. Specifications**

- (a) If Goods are supplied in accordance with the Buyer's specifications (the "Specifications") the Buyer shall be solely responsible for the Specifications and ensuring that they are accurate.
- (b) The Buyer shall be responsible for supplying the Specifications within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- (c) The Specifications and designs of the Company which without prejudice to the generality of the foregoing shall include illustrations, drawings, weights and dimensions are, unless expressly stated otherwise, subject to modification or improvement without notice and must be regarded as approximate representations only and are not binding in detail unless expressly stated to be so and all title and copyright in the specifications submitted by the Company shall remain vested in the Company.
- (d) The Buyer agrees that it shall not disseminate or disclose to any third party any of the information relating to the Company's specifications (other than that published in the Company's brochures and marketing literature) without the prior written consent of the Company.

#### **4. Packaging**

Packaging for the goods shall be at the discretion of the Company which shall have the right to pack the Goods in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit unless detailed packaging instructions are received from the Buyer and agreed in writing by the Company prior to agreeing a price for the goods.

#### **5. Price**

- (a) All prices shall be as stated on the Company's Confirmation of Order.

(b) All prices stated shall be subject to variation at the sole discretion of the Company at any time without prior notice and the Company shall notify the Buyer of any variation before delivery of the Confirmation of Order.

#### 6. Payment

(a) The Company shall issue invoices on the date of delivery of the Goods to Buyer. Subject to any special terms agreed in writing between the Company and the Buyer, payment of Company's invoices by Buyer shall be due 30 days from the date of invoice.

(b) Sums unpaid after the due date shall bear interest until the day payment is received at the rate of 5% per annum above the base rate from time to time of Lloyds Bank Plc accruing from day to day from the due date for payment until the date of payment in full.

(c) If the recovery of sums outstanding from the Buyer is passed to a third party the Buyer shall pay the Company's costs in instructing the said third party and all ancillary legal and other costs incurred in recovering sums outstanding from the Buyer.

(d) Without prejudice to any other rights or remedies of the Company any default of the Buyer in making payment on the due date shall entitle the Company to suspend deliveries under the Contract or any other contract so long as the default continues and to treat the Contract as repudiated by the Buyer and determined if the Buyer has not within 14 days of receiving written notice from the Company paid all sums due to the Company.

(e) If the Company in its reasonable opinion is concerned as to the ability of the Buyer to pay for the Goods in accordance with clause 6 (a) the Company may upon notice to the Buyer may change the terms of payment to payment in full or in part in advance of delivery of the entire undelivered balance of the Goods or any future sales of Goods.

#### 7. Delivery

(a) Unless otherwise agreed in writing, delivery shall take place when the Goods are unloaded at or delivered to the Buyer's premises or other delivery location specified in the Company's Confirmation of Order. Risk in the Goods will pass to Buyer immediately upon delivery.

(b) If it is agreed in writing that the Buyer shall collect or arrange collection of the Goods from the Company's premises, or nominate a carrier for the Goods, delivery shall take place when the Goods are loaded on to the collection or carrier's vehicle.

(c) Time for delivery shall not be of the essence unless previously agreed by a director of the Company in writing. The Company will use its reasonable endeavours to complete delivery on or before any delivery dates requested by the Buyer or estimated by the Company but will not be liable for any delay in delivery.

(d) The Buyer shall accept immediate delivery or arrange to collect the Goods or arrange suitable storage, failing which the Company may either:-

(i) effect delivery by whatever means it thinks most appropriate, or

(ii) arrange storage at the Buyer's risk and expense pending delivery, or

(iii) re-sell or otherwise dispose of the Goods without prejudice to any other rights the Company may have against the Buyer for breach of contract or otherwise.

(e) Where the Contract provides for delivery by instalments each instalment shall constitute a separate contract and any failure or defect in any one or more instalments delivered shall not entitle the Buyer to repudiate the Contract nor to cancel any subsequent instalments.

(f) The Buyer shall not be entitled to reject the Goods by reason only of short delivery.

(g) The quantity of the Goods delivered under the Contract shall be recorded by the Company upon despatch from the Company's factory or warehouse and the Company's record shall be accepted by the Buyer as conclusive evidence of the quantity delivered.

(h) It is the Buyer's responsibility to notify the Company if the Goods have not been received by the Buyer within seven days of the date of receipt of the Company's invoice therefor. If no notification is made the Buyer shall be deemed to have received the Goods.

## 8. Examination and Claims

(a) The Buyer shall upon delivery examine the Goods and shall promptly (but in any event within seven working days of delivery) notify in writing the Company and the carrier, where relevant, of any apparent damage, defect or shortage.

(b) The Buyer shall comply with the carriers rules, regulations and requirements so as, when appropriate, to enable the Company to make a claim against the carrier in respect of any damage or loss in transit.

(c) Claims in respect of damage, defects or shortage not apparent on examination under (a) must be notified in writing to the Company within twenty-one days of the date of delivery.

(d) Notification under (a) and (c) above shall be first made by telephone then by notice in writing delivered by facsimile or by first class recorded delivery mail and addressed to:

Egbert H Taylor & Company Limited, Oak Park, Ryelands Lane, Elmley Lovett, Droitwich, Worcestershire WR9 0QZ.

Tel No: 01299 251333. Fax No: 01299 254142.

In default of such notification the Company shall, subject to any claim which the Buyer may have under the Guarantee and Warranty referred to in Clause 9, be deemed conclusively to have properly performed its obligations under the Contract.

## 9. Guarantee and Warranty

(a) The Goods are subject to the Guarantee (the "Guarantee") if any, submitted by the Company in writing to the Buyer before the date of the Company's Confirmation of Order which has been agreed as appropriate and fair.

(b) Save as referred to in (a) above the Company warrants only (the "Warranty") that the Goods are reasonably free from defects in design, (other than a design submitted or specified by the Buyer), in material or workmanship for twelve months from the date of delivery (the "Warranty Period") provided always that in the respect of goods, materials, parts or components supplied but not manufactured by the Company the Warranty will be equivalent to the Warranty (if any) which the Company may have received from the manufacturer or supplier of such goods, materials, parts or components but not so as to impose a liability greater than that imposed on the Company by the Warranty Period and provided that the Buyer has given the Company written notice and satisfactory proof of any defect promptly upon discovery of such defect but in no case later than seven days after expiry of the Warranty Period.

(c) The Company's obligations to the Buyer under the Warranty and the Guarantee shall not apply:-

(i) to damage caused by the Buyer's or any third party's act, default or misuse of the Goods (including, without limitation, damage caused by faulty or negligently maintained lifting equipment or the misuse of lifting equipment by any person in connection with which the Goods are used) or by failure to follow any instructions supplied with the Goods;

(ii) if the Goods have been stored, handled or applied in such a way that damage is likely to occur;

(iii) if the Goods are altered, modified or repaired in any place other than the Company's factory or by persons not expressly nominated or approved in writing by the Company

(iv) if the Goods are altered, modified or repaired by using spare parts or components not supplied or not approved in writing by the Company where such spare parts or components are shown to be the cause of the defect;

(v) if the Buyer shall not have paid by the due date for payment for all Goods supplied whether under the Contract or under any other Contract between the Company and the Buyer;

(vi) in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

(d) 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 statute or common law are excluded to the fullest extent permitted by law.

(e) Subject to (c) above, the Company shall, at its sole option, repair or replace the Goods or refund the purchase price for the Goods found to be defective in design materials or workmanship.

(f) Save for liability for death or personal injury arising from the Company's negligence and for liability arising under the Consumer Protection Act 1987 (which if proved is not excluded) the Company's obligation to repair, refund or replace as aforesaid shall constitute the full extent of the Company's liability in respect of any loss or damage sustained by the Buyer whether caused by any breach of Contract or by misrepresentation or negligence of the Company, its employees or agents or arising from any other cause whatsoever and the Company shall not be liable for any consequential, economic, direct or indirect loss suffered by the Buyer arising therefrom.

(g) The cost to the Company of and incidental to the return by the Buyer to the Company of any of the Goods delivered hereunder shall, except to the extent that the Company has accepted responsibility hereunder in writing, be the responsibility of the Buyer who shall indemnify the Company against any such costs including, but without limitation to the generality of the foregoing, costs of transport and testing or any other cost or loss to the Company arising therefrom.

(h) Notwithstanding sub-clause (f) above the Buyer shall, except where he is a person who suffers personal injury or death or loss or damage to property such as to give rise to a claim under the Consumer Protection Act 1987, indemnify the Company against all loss, damage, liability, legal fees and costs arising from any such claim made against the Company under the Consumer Protection Act 1987.

#### 10. Risk, Title and Retention of Title

10.1 Notwithstanding that risk in the Goods shall pass to Buyer in accordance with the provisions of clause 7, title and property in the Goods (both legal and equitable) shall only pass to Buyer when the Company has received in full (in cash or cleared funds) all monies due to it from Buyer in respect of:

10.1.1 the Goods, and

10.1.2 all other amounts which are or which become due to the Company from Buyer on any account (whether immediately due or not).

10.2 Until such time as title and property pass to Buyer in accordance with clause 10.1, Buyer shall:-

10.2.1 hold the Goods in a fiduciary relationship as the Company's bailee;

10.2.2 store the Goods safely and separately from other goods in Buyer's possession in such a way that they remain readily identifiable as the Company's property;

10.2.3 not destroy, deface or obscure any identifying mark on the Goods or their packaging;

10.2.4 maintain the Goods in a satisfactory condition, insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and on request produce such policy of insurance to the Company;

10.2.5 hold all proceeds of the insurance referred to in clause 10.2.4 on trust for the Company and not mix it with any other money or pay the proceeds into any overdrawn bank account;

10.2.6 ensure that no charge, lien or other encumbrance is created over the Goods;

10.2.7 deliver up the Goods to the Company upon demand.

10.3 The Company shall be entitled without further notice to recover possession of any Goods to which it retains title and for that purpose to enter Buyer's premises where the same may be situated without prejudice to any other rights that the Company may have.

10.4 The Buyer grants to the Company (or its successors in title to the Goods) and their respective employees and agents an irrevocable licence to enter at any time any premises where the Goods are or may be situated for the purpose of inspecting or removing any such Goods the title in which has remained with the Company.

10.5 The Company may maintain an action for the price of the Goods notwithstanding that title to them has not passed to Buyer.

10.6 The Buyer may resell, use or otherwise dispose of the Goods before title has passed to it only if any such sale, use or disposition will be affected in the ordinary course of Buyer's business and shall be a sale, use or disposition of the Company's property on Buyer's own behalf and Buyer shall deal

as principal. The Company shall be legally and beneficially entitled to the proceeds of sale of the Goods which shall be paid forthwith to the Company in satisfaction of the sums owing or until such time shall be held in trust for the Company and shall not be mixed with other money or paid into an overdrawn bank account and shall be at all material times identified as the Company's money

10.7 The Goods shall be deemed sold or used in the order delivered to Buyer so that any unpaid invoices shall be deemed to relate, so far as possible, to Goods unused by the Company

#### 11. Breach by or Insolvency by the Buyer

If the Buyer shall not comply with any of its obligations to the Company or upon the occurrence of any of the Events referred to in Clause 10 (b)(iv), the Company shall have the right to forthwith to terminate the Contract but without affecting any other claim, right or remedy of the Company against the Buyer.

#### 12. Cancellation, Suspension and Termination

(a) If the Buyer shall purport to cancel the whole or any part of the Contract the Company may by notice in writing to the Buyer elect to treat the Contract as repudiated and the Buyer shall thereupon be liable to pay to the Company by way of liquidated damages a sum equal to all the expenses incurred by the Company in connection with the Contract including an appropriate amount in respect of administrative overheads, costs and losses of profit. The Company's reasonable estimate of the expenses incurred shall be final and binding on the parties.

(b) If for any cause whatsoever beyond its control the Company is unable to make any delivery on the applicable delivery date or perform any of its obligations under the Contract the Company may by notice in writing to the Buyer terminate the Contract or suspend the Contract without liability for any loss or damage thereby incurred by the Buyer.

#### 13. Export Sales

(a) In respect of Sales of Goods outside the United Kingdom ("Export Sales") the provisions of these conditions shall apply unless inconsistent with the terms of this clause.

(b) Unless otherwise specifically agreed between the Company and the Buyer all Export Sales shall be made C.I.F to the Buyer's premises and the Company's prices as set out in its Price List shall be increased to cover the Company's costs in making such deliveries and recorded on the Company's Confirmation of Order.

(c) Unless otherwise agreed in writing payment shall be made by irrevocable letter of credit drawn in England on a United Kingdom Clearing Bank and Licensed Deposit Taker in the United Kingdom on presentation of the bills of lading.

(d) The Buyer warrants that if an import licence or permit is required for the importation of the Goods into the country of destination then such import licence or permit has been obtained or will be obtained prior to shipment.

#### 14. Force Majeure

(a) In so far as the performance of the Contract by the Company may be affected by any strike, any lack of available shipping or transport or materials, any restriction regulation or decree by any local or municipal authority or government department or by any cause beyond the Company's reasonable control (which shall be construed without reference to the preceding causes) the Company may elect at its absolute discretion, without liability for any loss or damage thereby incurred by the Buyer, either:-

(i) to terminate the contract; or

(ii) to proceed to perform or continue performance under the Contract within a reasonable time after the termination of such events or circumstances.

(b) In the event that the Company makes an election under clause 14 (a) the Buyer shall accept the Goods or such part of them as are delivered to it notwithstanding any delay.

#### 15. Patents, Registered designs, trademarks, trade names and Copyright

The Buyer shall indemnify the Company against all damage, loss, costs, claims and expenses arising out of any infringement of any letters patent, registered design, trade mark, trade name or copyright or any claim for such infringement or any claim for passing off arising out of work carried out in accordance with the Buyer's specifications.

16. Right to Sub-Contract/Assignment

(a) The Company shall be entitled to sub-contract the whole or any part of the Contract without the Buyer's consent.

(b) The Company shall be entitled to assign or otherwise transfer the whole or any part of the Contract or any of the Company's rights and obligations hereunder (including, without limitation, any debt or indebtedness owed by the Buyer to the Company) whether in whole or in part without the prior written consent of the Buyer.

17. Severance

Should any one or more of these Conditions be found to be or become invalid, illegal or unenforceable in any respect under any law, the enforceability and validity of the remaining Conditions shall not in any way be affected or impaired thereby.

18. Waiver

No waiver by the Company 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.

19. Proper Law

The Contract is and shall be deemed to have been made in England and shall in all respects be governed by English Law and shall be subject to the jurisdiction of the English Courts.

Conditions of Sale November 2005 – Revision 1, Dated 28 September 2008