

CONDITIONS OF SALE

1. INTERPRETATION

In these Conditions of Sale the following words and phrases shall have the following meanings, unless the context otherwise requires:

"BUYER"	means the person, firm, partnership, limited liability partnership, corporation or company who/which has accepted a quotation of the Seller for the sale of the Goods, or whose order for the Goods is accepted by the Seller.
"GOODS"	means the goods which are to be sold and bought under the Contract (the quantity and specification of which shall be as stated in the Contract).
"SELLER"	means [full name and address]
"CONDITIONS"	means the Conditions of Sale set out in this document
"CONTRACT"	means the contract by which the Seller has agreed to sell and the Buyer has agreed to buy the Goods, consisting of the Seller's quotation and the Buyer's written acceptance or written acknowledgment of the same, or the acceptance by the Seller of the Buyer's order, as the case may be, duly incorporating the Conditions.
"WRITING"	includes e-mail, facsimile transmissions and any other comparable means of communication.

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

2. BASIS OF SALE

Any variation of the Contract and/or these Conditions shall have no legal effect unless expressly agreed in writing and signed by an authorized signatory 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 in writing by the Seller and the Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer.

3.2 The quantity, quality and description of the Goods 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** Any specifications, advertising material and any descriptions and illustrations contained in the Seller's catalogues or brochures ("**the Specifications**") are issued for the purposes of giving an approximate idea of the Goods. The Goods are natural products. Therefore the Seller cannot guarantee that the appearance and/or colors shown in the Specifications exactly reproduce the appearance and/or colors of the Goods sold.
- 3.4** All sizes quoted are approximate.
- 3.5** The Contract will be subject to the provisions of The Sale of Goods Act 1979 (and amendments thereof) ("**the Act**").
- 3.6** The Goods are perishable goods for the purposes of the Consumer Protection (Distance Selling) Regulations 2000 as amended by SI1689 2005 ("**the Regulations**"). The Buyer acknowledges that it shall not have a cancellation right under the Regulations.
- 3.7** 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 (including the cost of all labour), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF GOODS

- 4.1** 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 acceptance of the order.
- 4.2** All prices quoted are valid for 7 days only or until earlier acceptance in writing by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.3** All prices are given by the Seller on an ex stock basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4** The price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Seller.

5. TERMS OF PAYMENT

- 5.1** Unless an agreement has been reached under Clause 5.3 below the Buyer shall pay for the Goods in cash or by credit/debit card on or before delivery of the Goods.
- 5.2** Payment by cheque may be accepted but no delivery of the Goods will be made until the Buyer's cheque has cleared in the Seller's bank account.
- 5.3** Subject to Clause 5.4 below, and provided the Buyer makes an application to the Seller at least 28 days prior to the date of delivery, the Seller may, subject to satisfactory references, allow the Buyer to pay for the Goods within a period of 30 days from the date of delivery of the Goods or such greater period as may be agreed in writing between the Buyer and the Seller. If payment is not made by the end of the agreed period then the Seller shall, without prejudice to any other right available to it, be entitled to charge the Buyer interest at 2% of the total invoice sum per month or part of a month during which payment is overdue.

5.4 Any credit given by the Seller to the Buyer may be withdrawn or limited at any time by the Seller on such notice as the Seller may think fit and without explanation and consequent thereon the Seller may refuse to deliver all or part of the Goods unless full payment of the price is made in accordance with Clauses 5.1 and 5.2.

6. **DELIVERY**

6.1 The Seller shall notify the Buyer in writing when the Goods are ready for collection;

6.2 Unless Clause 6.4 hereof applies, the Buyer shall make arrangements for collection of the Goods at the Buyer's expense.

6.3 Collection of the Goods by the Buyer shall constitute delivery.

6.4 If the Buyer so requests in writing and the Seller agrees in writing the Seller shall arrange for delivery of the Goods to an address specified by the Buyer. Any such delivery shall be on the basis that the Buyer shall pay the price in full and in advance to the Seller on demand for all the costs of transportation and insurance of the Goods.

6.5 Delivery of the Goods by the Seller shall be conditional upon free access being available to the Seller's (or the Seller's carrier's) vehicles to the address of delivery. Deliveries by the Seller may be made using large vehicles. It is the Buyer's responsibility to inform the Seller of any access problems no later than 2:00pm on the day prior to the delivery of the Goods. If delivery of the Goods is not possible in the opinion of the Seller then the Seller reserves the right to cancel the order without penalty.

6.6 The Seller will use its reasonable endeavours to meet any quoted date of delivery of the Goods.

6.7 In making delivery of the Goods time shall **not** be of the essence of the Contract and the Seller shall not be liable for any loss, costs or expense suffered by the Buyer by reason of any delay in delivery of the Goods.

6.8 If the Seller fails to deliver the Goods other than as a result of any cause whatsoever which is outwith the control of the Seller or as a result of the fault of the Buyer then in such circumstances if the Seller becomes liable to the Buyer, the Seller's liability shall be expressly limited to the excess (if any) of the cost of similar goods to the Buyer (in the cheapest available market) to replace those not delivered over the price of the Goods.

6.9 If Clause 6.1 applies and the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions within 7 days from the Seller's notice (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 at its sole discretion may:

6.9.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurances) of storage; or

- 6.9.2** 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.
- 6.10** Notwithstanding the provisions of Clause 6.9 if the Buyer fails to collect the Goods at the agreed time the Buyer shall be liable for any loss suffered by the Seller due to deterioration of the Goods.
- 6.11** If it has been agreed in writing between the Seller and the Buyer that the Seller will deliver the Goods by installments, each installment shall be a separate Contract and no cancellation or termination of any one contract relating to an installment shall entitle the Buyer to cancel any other Contract or installment.

7. RISK, LIEN AND TITLE

- 7.1** The risk of any loss or destruction of, or any damage to the Goods shall pass to the Buyer:-
- 7.1.1** where Clause 7.1.3 applies when the Goods are collected by the Buyer from the Seller's premises;
 - 7.1.2** where Clause 6.4 applies, when the Seller dispatches the Goods;
 - 7.1.3** where Clause 6.9 applies, on the expiry of the period of 7 days from the Seller's notice in writing in accordance with Clause 6.9.
- 7.2** Notwithstanding the provisions of Clause 7.1.2, in the event of all or any of the Goods being lost or destroyed in transit or rightfully rejected by the Buyer and provided such event is notified to the Seller within two days, the Seller shall treat its contractual obligation as continuing and deliver a similar quantity of Goods on the terms hereof.
- 7.3** Without prejudice to the terms of these Conditions, the Seller shall have a lien or right to withhold delivery of the Goods to the Buyer or such part of the Goods as are in the possession of the Seller or in transit until payment in full of the price of the Goods, Value Added Tax thereon and the costs of transportation and insurance is received.
- 7.4** Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title and ownership in the Goods shall remain with the Seller until the Seller has received in cash or cleared funds payment in full of the price of the Goods, any applicable Value Added Tax thereon and the cost of transportation and insurance and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.5** Until title and ownership in the Goods pass 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 other goods of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties.

8. WARRANTIES AND LIABILITY

8.1 The Seller warrants to the Buyer that the Goods shall, at the time when the Buyer is notified that they are ready for collection (or at the time of dispatch, as the case may be under Clause 6) and subject to Clauses 3.3 and 3.4:

8.1.1 be of satisfactory quality within the meaning of Section 14 of the Act;

8.1.2 be reasonably fit for purpose;

8.1.3 conform to the description expressly stated in the Contract or, where applicable, to the sample exhibited to the Seller before the Contract is entered into subject to Clauses 3.3 and 3.4

8.2 The Buyer's rights under Clause 8.1 shall not be assignable

8.3 Any claim by the Buyer against the Seller under Clause 8.1 must be made by notice in writing given to the Seller within 72 hours from delivery failing which the Seller shall not have any liability in respect of the Goods and the Buyer shall be bound to pay the price.

8.3.1 The Buyer shall not be entitled to make any claim in respect of the quality of the Goods after they have been sold by the Buyer to a third party unless a retail guarantee has been agreed between the Buyer and the Seller.

8.3.2 Where a dispute arises between the Buyer and the Seller as to the quality of the Goods, the matter shall be referred, failing agreement between the parties, to two independent experts appointed by The Horticultural Trade Association and The British Christmas Tree Growers Association respectively. The decision made by the experts shall be binding on the parties who shall bear the costs of such process in equal shares.

8.4 Goods delivered on pallets must be removed from the pallets by the Buyer and placed in vertical position within 72 hours from the time displayed on the Seller's (or the Seller's carrier's) delivery note signed by the Buyer's authorised representative. If the Buyer fails to remove the Goods from the pallet and/or place them in vertical position within the 72-hour period provided in this Clause 8.4, the Seller will not be liable in any way whatsoever for any deterioration of the Goods' condition or continuing quality.

9. INSOLVENCY OF BUYER

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or has a Trustee in Sequestration appointed or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer in writing accordingly

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel immediately without any prior intimation to the Buyer, the Contract or suspend any further deliveries under the Contract without any liability to the Seller, and if the Goods have been delivered but not paid for the Buyer shall, at the option of the Seller, make any Goods still at this premises available for collection by the Seller and the price for the Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, credit to be given for any Goods collected by the Seller.

10. GENERAL CONDITIONS

10.1 All communications between the Seller and the Buyer in relation to the Contract must be in writing and delivered by first class post, facsimile transmission or e-mail:

10.1.1 in the case of communications to the Seller to the Seller's Registered Office (if is a company) or such other address as shall be notified to the Buyer by the Seller; or

10.1.2 in the case of communications to the Buyer to the Registered Office of the Buyer (if it is a company) or to such other address of the Buyer as shall be notified to the Seller by the Purchaser.

10.2 Communications shall be deemed to have been received:

10.2.1 if sent by first class post, 2 days (excluding Saturdays, Sundays and UK public holidays) after posting

10.2.2 if sent by facsimile transmission or e-mail on a working day by 4:00pm, at the time of transmission, and otherwise the next working day..

10.3 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.

10.4 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 provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.5 The Contract shall be governed by English law.

NOTHING IN THESE CONDITIONS SHALL AFFECT THE BUYER'S STATUTORY RIGHTS.

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