

## TERMS AND CONDITIONS OF SALE

### 1. INTRODUCTION

- 1.1. In these conditions, the "Company" means New Place Nurseries, the "buyer" means each person, firm or company purchasing any goods, "consumer" means persons as defined in section 12 Unfair Contract Terms Act 1977 and "goods" means the goods or materials supplied or to be supplied by the Company to the buyer.
- 1.2. These conditions shall apply to the contract between the Company and the buyer for the sale of those goods detailed in the order.
- 1.3. These conditions shall apply to the exclusion of any terms or conditions which the buyer or any other person may state or refer to in correspondence, order forms or otherwise, whether before or after receipt by the buyer of these conditions and notwithstanding any purported stipulation by the buyer to the contrary or any custom, practice or course of dealing.
- 1.4. No variation, exclusion or waiver of any of these conditions shall be effective unless made in writing by a duly authorised representative of the Company.

### 2. ORDERS

- 2.1. The buyer's order (whether given orally or in writing) shall be deemed to be an offer to purchase the goods specified in the order. Such offer shall be deemed to have been accepted on despatch of the goods.
- 2.2. The parties agree that if the buyer is entitled to reject part of a delivery of goods the buyer shall only be entitled to reject that part of the goods and shall accept the balance.

### 3. PRICE

- 3.1. The price payable for the goods shall (subject as provided below) be the price specified in the Company's price list in force at the date of despatch or collection. The Company reserves the right to vary any such price without notice at any time prior to contract.
- 3.2. All prices for goods quoted by the Company are exclusive of Value Added Tax but are carriage paid to destinations in the United Kingdom (excluding islands other than the Isle of Wight).

### 4. PAYMENT

- 4.1. Payment of invoices shall be made in full without deduction, set off or counterclaim no later than the time specified on the relevant invoice, time to be of the essence.
- 4.2. Where an invoice is not paid by its due date then the time for payment of all invoices then unpaid shall be forthwith and the buyer shall pay interest (both before and after judgement) on the total sums owing to the Company at a rate of 2% per month. Such interest to accrue on a monthly basis.
- 4.3. The buyer will be liable, on a full indemnity basis, for all costs, expenses and liabilities of whatever nature incurred by the Company in recovery or settlement of debts not paid by the due date.
- 4.4. The date that the Company has been paid shall be the date that the Company's bank irrevocably credits the Company's account. The Company shall use all reasonable endeavours to ensure this is as early as possible.

### 5. DELIVERY AND PASSING OF PROPERTY AND RISK TO BUYER

- 5.1. Goods shall be delivered at the place of delivery as stated on the invoice or on collection by or on behalf of the buyer.
- 5.2. Risk of damage to or loss of the goods shall pass to the buyer at the time of delivery or collection or if the buyer wrongfully fails to take delivery of the goods at the time when the Company has tendered delivery of the goods.
- 5.3. If the buyer fails to take delivery of any goods ordered by him the buyer shall pay the Company a commercial rate for the handling, storage and re-delivery of such goods from the date of such failure to the date when the buyer takes delivery. Should the buyer fail to take delivery within 7 days of the original date for delivery of any goods the Company shall be able to treat such contract as having been repudiated and the parties agree that 100% of the purchase price shall be payable by the buyer as liquidated damages.
- 5.4. Whilst every effort will be made by the Company to effect delivery in accordance with any pre-arranged dates, all delivery dates and schedules stated by the Company are approximate and shall not imply any obligation on its part to deliver the goods on any particular date or within the time stipulated. The Company shall in no circumstances be liable for any loss or damage the buyer may incur as a result of or in connection with the delays in delivery.
- 5.5. The buyer shall inspect the goods on delivery and it is agreed that unless the buyer immediately rejects the goods and the carrier leaves with them then the buyer shall be deemed to have accepted the same.
- 5.6. Notwithstanding delivery and the passing of risk in the goods to the buyer, or any other provision of these conditions, title to the goods shall only pass to the buyer on receipt by the Company in cash or cleared funds payment in full of the price of (1) the goods and (2) all other goods of whatever nature agreed to be sold by the Company to the buyer for which payment is then due.

### 6. DANISH TROLLEYS

- 6.1. If goods are delivered to the Buyer by Container-Centralen Trolleys and Pot Plant Containers and shelves and these are left at the Buyer's premises, the following terms and conditions shall apply.
  - i. All such trolleys, containers and shelves delivered by The Company to the Buyer shall be used for no purpose other than for containing plants delivered by The Company.

- ii. Ownership of the said trolleys, containers and shelves shall in no circumstances pass to the Buyer.
- iii. All such trolleys, containers and shelves (or equivalent in number and condition) are returnable to The Company on demand and shall be returned in good condition.
- iv. While trolleys, containers and shelves are on the Buyer's premises or within the Buyer's control, the Buyer shall take all reasonable steps to keep and secure the same in good condition and any loss of or damage (howsoever caused) to the trolleys or containers or shelves shall be charged to the Buyer (together with any handling costs involved) at the then current rate charged by Container Centralen.
- v. All trolleys and shelves shall be exchanged like for like
- vi. All returned trolleys must have Container Centralen identification.
- vii. Non exchange of like for like trolleys will incur daily rental charges in line with those set by Container Centralen.

### 7. CLAIMS

- 7.1. The buyer shall as set out in clause 5.5 inspect the goods on their arrival or collection and shall be responsible for any consequential losses caused by any defects in the goods that a reasonably competent person in the buyer's position would have detected during a reasonably thorough inspection.
- 7.2. Any claim by the buyer which is based on short delivery or that the condition of the goods makes their quality unsatisfactory or their failure to correspond with the Company's specification for such goods must (irrespective of whether the goods have been accepted or purportedly rejected in accordance with sub-clause 5.5 above) be made in writing and be received by the Company setting out both the basis and level of the claim within 2 days after delivery of the goods to the buyer. Failing this, the buyer shall be deemed to have accepted the goods unconditionally and the Company shall have no liability for any such short delivery, unsatisfactory quality or failure to correspond with specification.
- 7.3. The Company shall have 2 days from the receipt of such a claim to accept or reject the claim and communicate the same to the buyer (time not being of the essence). If the Company accepts the validity of a claim the Company shall be entitled (at its option) to replace such goods free of charge or issue a credit note for the invoice value of such goods and having done so shall have no further liability to the buyer in respect of such defect or failure. All good subject to credit note or replacement must be returned to the Company.

### 8. WARRANTIES

- 8.1. Other than in respect of death or personal injury caused by the negligence of or a breach of contract by the Company, the Company shall not be liable to the buyer for any damages or losses whatsoever whether caused by the negligence or other breach of duty by the Company, its employees or agents or otherwise that may either directly or indirectly be occasioned by the goods or by the use of the goods or connected with the goods in any other way.
- 8.2. No warranty is given that the goods are fit for any particular purpose (whether or not such purpose has been made known to the Company) except to the extent that the Company has advised in writing on the suitability of the goods for a particular purpose.
- 8.3. The buyer acknowledges that where the Company gives (either on the packaging of the goods supplied or in accompanying literature or in the Company's trade literature dealing with the goods) particular written instructions or recommendations for the storage, handling or other use of or otherwise in connection with the goods, it is essential that those instructions or recommendations should be followed, otherwise the nature, characteristics and performance of the goods supplied may be adversely affected and accordingly the buyer agrees to follow or comply with all such instructions or recommendations.
- 8.4. The buyer acknowledges that the Company has no control over the storage or any other use of the goods or over weather or other environmental conditions or the actions of pests after the goods have been delivered and that each of these matters can affect the nature, characteristics and performance of goods supplied by the Company.
- 8.5. The buyer shall indemnify the Company in respect of any losses, costs, expenses or liabilities arising out of the goods, their use or storage or otherwise.
- 8.6. Subject as expressly provided in these conditions all warranties, conditions or terms implied by statute, common law, custom, and practice or otherwise are excluded to the fullest extent permitted by law. The Company shall not in any circumstances be liable for any indirect or consequential losses arising directly or indirectly from or in connection with the goods. Without prejudice to the above should the Company be found liable in any circumstances including negligence or breach of duty in respect of or in connection with the goods, any compensation and damages payable under any claim or claims howsoever arising shall not in aggregate amount to more than 10 times the price at which the claimant purchased the particular goods forming the subject of the claim.
- 8.7. The buyer acknowledges that the Company's employees or agents are not authorised to make any representation or give any warranty or give advice concerning the goods unless such representation warranty or advice has been confirmed by the Company in writing. In entering into the contract the buyer acknowledges that it does not rely on, and waives any claim in connection with, any such representation or warranty, and does not rely on any advice, which is not so confirmed.

- 8.8. By entering into this contract the buyer acknowledges and confirms that it is not a consumer, that it does not seek to purchase the goods on its own behalf as an end-user and that it is purchasing the goods with the intention of re-selling the same to consumers in accordance with its business.

### 9. BUYER'S DEFAULT

- 9.1 If the buyer:
  - i. refuses or fails to take delivery of the goods tendered in accordance with the contract; and/or
  - ii. breaches any of these conditions including without limitation failure or delay in payments for any goods (or part thereof) on the due date; and/or
  - iii. makes any voluntary arrangement with creditors or becomes bankrupt or has a receiver appointed in respect of all or any part of the buyer's assets; and/or
  - iv. (being a company) commences to be wound up (other than solely for the purposes of solvent amalgamation or reconstruction) or has an administration order made in relation to it; and/or
  - v. is believed by the Company to be in circumstances which entitle the Court, or a creditor to appoint or seek the appointment of a receiver, administrator or manager, or which entitle the Court to make a winding-up order, or if the buyer takes or suffers any similar or analogous action in consequence of debt; and/or
  - vi. if there is a change in the management or control of the buyer; and/or
  - vii. if the buyer is in breach of the terms of clause 9.2 below and/or
  - viii. if the Company reasonably
  - ix. apprehends that any of the above will or
  - x. may in its opinion occur or be about to occur in relation to the buyer; the Company may without prejudice to its other rights forthwith terminate this contract and/or require immediate payment of all sums under this contract whether or not the price in respect of the goods is otherwise due and payable by the buyer at such time and/or immediately and without notice enter upon any premises of the buyer where goods are stored or where they are reasonably thought to be stored for the purposes of repossessing them.
- 9.2 The buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods in respect of which title has not passed to the buyer in accordance with clause 5.6 of this contract and in the event that the buyer does so pledge or charge any of the goods all moneys owing by the buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

### 10. NO WAIVER

- 10.1 No forbearance or indulgence by the Company shown or granted to the buyer whether in respect of these conditions or otherwise shall in any way affect or prejudice or be regarded as a waiver of any rights of the Company against the buyer.

### 11. GENERAL

- 11.1 All disputes arising out of or in connection with the contract, shall be governed by English law and, in entering into the contract the buyer submits to the non-exclusive jurisdiction of the English Courts.

### 12. FORCE MAJEURE

- 12.1 This contract may be terminated or suspended in whole or in part by the Company by reason of the prospect, happening or result of any industrial dispute, act of God, war, civil commotion, legislation, breakdown of machinery, inability to obtain supplies, raw materials, equipment fuel, power, components or transportation, inability to obtain any necessary import or export or other licences or the consent of any governmental authority or any other cause or circumstances whatsoever beyond its control without liability on the part of Company for any loss or damage whatsoever whether direct or indirect. If the Company shall elect to terminate this contract pursuant to this clause 12, and a part only of the goods to be delivered under this contract has been so delivered at the time of such termination the buyer shall remain liable for payment of the part of the price that relates to such delivered goods irrespective of termination and payment in respect of that part of the price relating to such goods delivered shall become due and payable forthwith.

