

Terms & Conditions

Tates of Pyecombe Limited – Wholesale Nursery Supply of Goods and Services: Terms and Conditions (the “Conditions”)

1. Application of Terms

- 1.1. These Conditions are incorporated into all contracts for the sale of plants (‘the Goods’) by Tate of Pyecombe Ltd (‘the Company’)
- 1.2. In these Conditions ‘you’ or ‘your’ will mean the customer placing the order with the Company.
- 1.3. These Conditions may be amended by the Company at any time. You will be informed of any amendments in writing prior to the effective date of the amendment.
- 1.4. These Conditions shall apply to the exclusion of all other terms and conditions or any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing. The placing of an order implies acceptance of these Conditions and no variation of these Conditions will be accepted unless agreed in writing beforehand by a Director of the Company.
- 1.5. Each order form sent to the Company constitutes an offer by you to purchase the Goods specified in that order form on these Conditions. No order placed by you shall be accepted by the Company other than by a written acknowledgement issued and executed by the Company or (if earlier) the Company delivers the Goods to you, when a contract for the supply and purchase of those Goods on these Conditions will be established (‘the contract’).
- 1.6. Any order placed by you is subject to the Company’s minimum order requirements of one Danish Trolley.
- 1.7. All orders are taken subject to the Goods being in stock at the time of your order.
- 1.8. You may book bulk orders (‘Nursery Stock Bulk Orders’) and ‘call-off’ part orders in consignments to cover your year’s requirements provided that each ‘call-off’ part order is an economic delivery load.
- 1.9. No liability is accepted for non-availability of goods.

2. Description

- 2.1. The quantity and description of the Goods shall be as set out in the Company’s Acknowledgement of your order.
- 2.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures and issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

3. Delivery

- 3.1. Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at your place of business.
- 3.2. 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. No liability is accepted for any loss or damage resulting from late delivery.
- 3.3. Risk in the Goods shall pass to you upon delivery and thereafter the Goods shall be at your risk.
- 3.4. Where you have made a Nursery Stock Bulk Order, the Company may deliver the Goods by separate Instalments. Each separate instalment shall be invoiced and paid for as if each instalment constituted a separate contract. However, no cancellation or termination of any one instalment shall entitle you to repudiate or cancel any other instalment.
- 3.5. Where deliveries are made on Container Centralen (CC) trolleys, exchange will be accepted only on Genuine RFI labelled/tagged stock within the system.
- 3.6. The equal quantity of empty CC labelled/tagged trolleys and shelves must be exchanged on the same lorry that has made the delivery and in good condition. Failure to do so may result in a charge.
- 3.7. Ownership of trolleys, containers and shelves shall in no circumstances pass to the Customer.

4. Risk/Title

- 4.1. The Goods are at your own risk from the time of actual or proffered delivery. Ownership of the Goods

Shall not pass to you until the Company has received in full (in cash or cleared funds) all sums due to it in Respect of:

- 4.1.1. The Goods; and
- 4.1.2. All other sums which are or which become due to the Company from you on any account.
- 4.2. Until ownership of the Goods has passed to you, you shall:
 - 4.2.1. Hold the Goods on a fiduciary basis as the Company's Bailee:
 - 4.2.2. Store the Goods (at no cost to the Company) separately from all your other Goods or any third party's Goods in such a way that they remain readily identifiable as the Company's property.
 - 4.2.3. Not destroy, deface or obscure any identifying mark or packaging on or relating to the Good; and
 - 4.2.4. 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 you shall produce the policy of insurance to the Company.
- 4.3. You may resell the Goods before ownership has passed to it solely on the following conditions:
 - 4.3.1. Any sale shall be effected in the ordinary course of your business at full market value; and
 - 4.3.2. Any such sale shall be a sale of the Company's property on your behalf and you shall deal as principal when making such a sale.
- 4.4. Your right to possession of the Goods shall terminate immediately if:
 - 4.4.1. You are unable to pay your debts within the meaning of the insolvency Act 1986, you make any voluntary arrangement with your creditors or (being an individual) becomes bankrupt or (being a company) you enter administration, or go into liquidation, or a moratorium comes into force in respect of your business (within the meaning of the insolvency Act 1986) or ceases to trade or carry on business, or
 - 4.4.2. You encumber or in any way change any of the Goods.
- 4.5. 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. You grant the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where your right to possession has terminated, to recover them.
- 4.6. Where the Company is unable to determine whether any Goods are in Goods in respect of which your right to possession has terminated, you shall be deemed to have sold all Goods of the kind sold by the Company to you in the order in which they were invoiced to you.
- 4.7. On termination of the Contract, howsoever caused, the Company's rights contained in this condition 4 shall remain in effect.

5. Price and Payment

- 5.1. The Goods will be invoiced at the prevailing prices of the Company as at the date of delivery. VAT is not included in the catalogue price except where specifically stated and will be charged at the rate prevailing on the date of delivery. Our VAT registration number is 190 2236 84.
- 5.2. Prices are CARRIAGE PAID to mainland England, Scotland and Wales.
- 5.3. Full payment for the Goods is due 30 days after the date of the invoice.
- 5.4. Time for payment shall be of the essence. If account facilities are required Customers are required to furnish two satisfactory trade references and the address of their bank. The granting of account facilities is in the absolute discretion of the Company.
 - 5.4.1 This clause is not intended as an offer of extended credit and action to recover an outstanding debt may be taken at any time after an account is payable.
- 5.5. Without prejudice to any other right or remedy that it may have, if you fail to pay the Company any sum due pursuant to the Contract on the due date, the Company may:
 - 5.5.1. Charge the interest on such overdue sum from the due date for payment at -the annual rate of 2% per month, accruing on a daily basis until payment is made, whether before or after any judgement:
 - 5.5.2. Display or withdraw any discount to its prices and charge you the full undiscounted price for the Goods:
 - 5.5.3. Suspend all deliveries of Goods to you until payment has been received in full; and
 - 5.5.4. Cancel any or all existing orders for the Goods.

7. Quality

- 7.1. You acknowledge that the Company cannot exercise control over the Goods supplied once they have left the Company's premises and so you can give no warranty, express or implied as to quality of the Goods. You shall check the Goods on delivery. Any damage or defects in the Goods, shortage or pilferage of the Goods in transit or mislabelling of the Goods discovered by you on inspection should be reported to the Company in writing within 48 hours of delivery of the Goods. Damaged or defective Goods must be retained for inspection by the Company. The Company shall consider any such notification and, where your claim is accepted, will provide you with a credit note in the amount of the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, you shall, at the Company's expense, return the Goods which are damaged, defective or mislabelled.

8. Pre-pricing and Coding

- 8.1 Should individual plant labels be supplied the Company's liability is limited to the supply of a replacement correctly priced and coded label if requested and no further or other liability will be accepted in this context; "coded" includes bar codes and all other point of sale codes.

9. Limitation of Liability

- 9.1. 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) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2. Nothing in these conditions excludes or limits the liability of the Company:
- 9.2.1. For death or personal injury caused by the Company's negligence; or
 - 9.2.2. For any matter which it would be illegal for the Company to exclude
 - 9.2.3. Or attempt to exclude its liability; or
 - 9.2.4. For fraud or fraudulent misrepresentation.
- 9.3. Subject to conditions 5.1 and 8.2:
- 9.3.1. The Company's total liability in contract, (or) (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 total price of the Goods; and
 - 9.3.2. The Company shall not be liable to you for the 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.
- 9.4. 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 you (without liability to you) 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, adverse weather, 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 7 days, you shall be entitled to give notice in writing to the Company to terminate the Contract.

10. Termination/suspension

- 10.1. The Company shall be entitled to serve notice to suspend and/or terminate the Contract with immediate effect in the event that:
- 10.1.1. You are unable to pay your debts within the meaning of the insolvency Act 1985, you make any voluntary arrangement with your creditors or (being an individual) becomes bankrupt or (being a company) you enter administration, or go into liquidation, or a moratorium comes into force in the respect of your business (within the meaning of the insolvency Act 1986) or ceases to trade or carry on business or
 - 10.1.2. You breach any provision of the Contract or any other contract for Goods (in particular but not limited to the payment terms in condition 5) and, in the case of a breach capable of remedy, fails to remedy the same within 7 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

11. General

- 11.1. The formation and construction of the Contract shall be governed by and construed in accordance

with English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts.

- 11.2. Notices and communications relating to the Contract shall be served either:
 - 10.2.1. By post to the designated address of the party concerned; or
 - 10.2.2. By fax to the number specified by each party in the order form.
- 11.3. Each party may serve notice on the other at any time to specify a new address for service, or a new fax number.

12. Cancellation of Order

- 12.1 Any order placed by the Customer and accepted by the Company may not be cancelled in whole or in part except with the prior agreement in writing of the Company. If agreement is given by the Company, a cancellation surcharge will be made to cover the Company's actual or anticipated loss. The Company reserves the right to charge the full price of the goods by way of a cancellation charge.

13. Substitutions

- 13.1 Should the Company be out of stock of any specific size or variety, the nearest size or variety will be supplied unless otherwise instructed.

14. Severability of Terms and Conditions

- 14.1 Each of the Terms and Conditions hereof shall be treated as independent and severable and should any of the above Terms and Conditions be or be declared invalid before a Court of competent jurisdiction then such term or condition shall be deemed to be deleted from these Terms and Conditions and the remaining Terms and Conditions shall be treated as being unaffected by such deletion.