

The following are the terms and conditions ("Terms") on which D. W. Frost (Wholesale Nurseries) Ltd. has agreed to supply goods (as defined below) to the Customer (as defined below).

## 1 DEFINITIONS

- 1.1 D. W. Frost (Wholesale Nurseries) Ltd., registered in England and Wales under company registration number 1331381 whose registered office is at Fosseyway Nurseries, Car Colston, Nottinghamshire, NG13 8JA shall be known as the "Seller"
- 1.2 The "Customer" means the buyer of plants, other goods and services from the Seller.
- 1.3 The "Goods" means the plants, sundries and other goods and services sold under these Terms.

## 2 APPLICATION OF CONDITIONS

- 2.1 These Terms cancel all previous agreements, whether oral or written, that the Customer seeks to impose.
- 2.2 The Customer may place an order for Goods from the Seller by any oral or written form of communication, however no orders for Goods submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier ("Confirmation"), or by supply of the items so ordered.
- 2.3 The Customer shall be responsible for ensuring the accuracy of the terms of any order and for checking that the Confirmation is correct.
- 2.4 These Terms only apply to any Goods purchased from the Seller exclusively through the Plant Centre cash and carry facility.
- 2.5 Where the Customer places an order for goods not in stock on the nursery, or for bare root or root balled trees, the Customer will pay a 50% deposit for the stock on placing the order. Should the order be cancelled the deposit will not be refunded unless it is deemed that the bought in stock or bare root or root balled trees are not of merchantable quality.
- 2.6 These Terms apply to Customers for the Plant Centre cash and carry facility operated by the Seller.
- 2.7 The Seller shall not be liable or deemed to be in breach of contract by reason of delay in performing any of their obligations in relation to the Goods if the delay or failure was due to circumstances outside the Seller's control.
- 2.8 No variation of these Terms shall be binding unless agreed in writing between the authorised representatives of the Seller and the Customer.
- 2.9 The purchase of Goods implies acceptance of these Terms of sale.
- 2.10 No waiver shall be valid unless made in writing and signed by the Seller.
- 2.11 The Seller shall be entitled to amend and update these Terms from time to time.
- 2.12 These Terms constitute the entire agreement between the Customer and the Seller and supersede any and all prior agreements.
- 2.13 These Terms also apply to the Customer's agent, representative, employees or authorised user.

## 3 PRICE

- 3.1 The prices payable will be those displayed on site or in a price list. All prices for the Goods are ex- nursery and exclude packaging, insurance, carriage, VAT and other taxes and duties.
- 3.2 VAT will be added to an invoice where appropriate at the current rate.

- 3.3 The Seller reserves the right to alter prices without prior notice should the need arise.
- 3.4 All prices quoted exclude VAT and remain valid for 7 days from the date of quotation. All Goods offered on a quotation are offered subject to being unsold on receipt of an order. All prices quoted, either verbally or in writing are for collection only at the Plant Centre cash and carry facility unless otherwise stated in writing at the time of quoting.
- 3.5 All prices displayed in the Plant Centre cash and carry facility are applicable only to self-selected orders by the Customer. If the Customer requires the Seller to collate orders the Customer must give the Seller 48 hours notice prior to the desired collection time. An administration charge equivalent to 10% of the net order value will be charged. Cancellation of collated orders will be charged a cancellation fee of 10% of the net order value if cancelled within 24 hours of the desired collection time.

#### **4 PAYMENT & TITLE**

- 4.1 All purchases by the Customer must be paid for in cash or by Mastercard/Visa Credit Card, Switch/Delta, Visa Debit Card at the point of purchase and at the time of purchase unless the Customer has an approved credit account. Only Customers with an approved credit account may pay by cheque. Customers without an approved credit account and who wish to pay for Goods by internet banking / BACS must ensure that cleared funds for the agreed amount have been transferred into the Seller's account prior to an agreed collection/delivery date.
- 4.2 If the Customer has an approved credit account all payments are due within 28 days of the date of invoice unless agreed in writing.
- 4.3 The Seller reserves the right at the Seller's sole discretion to refuse credit to the Customer.
- 4.4 The Seller reserves the right to withhold further supplies of Goods in the event of agreed credit facilities being exceeded.
- 4.5 The Seller reserves the right to cancel any agreed credit facilities with the Customer if the agreed credit terms are not adhered to.
- 4.6 Without limiting any other remedies or rights that the Seller may have, if the Customer does not pay the Seller on time, the Supplier may cancel or suspend the supply of any other Goods until the Customer has paid the outstanding amounts.
- 4.7 The Seller will be entitled under the Late Payment of Commercial Interest (Act) 1998 to charge interest at the rate of 8% above the late payment reference rate per month on any overdue account which shall include any amount that the Seller has had to spend on the Customer's behalf. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer must pay to the Seller the interest together with the overdue amount.
- 4.8 The Seller will be entitled to recover from the Customer all legal and other costs incurred in recovering monies due on overdue accounts.

#### **5 RISK AND TITLE**

- 5.1 The Goods shall be at the Customer's risk as from delivery.
- 5.2 The Goods shall not pass from the Seller until:
  - 5.2.1 the Seller has received payment in full in cleared funds for the Goods plus VAT; and
  - 5.2.2 no other sums whatever shall be due from the Customer to the Seller.
- 5.3 Until title to the Goods passes the Customer shall hold the Goods on the Seller's behalf. The Customer shall store the Goods (at no cost to the Seller) separately

from all other goods in the Customer's possession and marked in such a way that they are clearly identified as the Seller's property and shall maintain the Goods in satisfactory condition.

- 5.4 The Seller shall be entitled to recover the full price for any Goods sold under these Terms including VAT, notwithstanding that the title in such Goods has not passed from the Seller.
- 5.5 If (before title to the Goods passes to the Customer) the Customer becomes subject to any of the events listed in clause 8, or the Seller reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been sold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly the Seller may enter any vehicle or premises where the Goods are stored in order to recover them.
- 5.6 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the Seller's property.
- 5.7 The Customer shall insure and keep insured the Goods to their full price against "all risks" to the Seller's reasonable satisfaction until the title in the Goods passes from the Seller.
- 5.8 Without prejudice to the Seller's other rights under these Terms, if the Customer fails to comply with its obligations under this clause 5 all sums whatsoever owing by the Customer to the Seller shall immediately become due and payable.

## 6 DELIVERY

- 6.1 The Customer may collect the Goods from the Seller OR the Seller will deliver the Goods to the Customer subject to clause 6.6 at the location set out in the order within 7 calendar days of the date set out in the order or on which the Seller notifies the Customer that they are ready.
- 6.2 Delivery of the Goods shall be completed when the Customer collects them from the Seller OR the Seller delivers them to the Customer.
- 6.3 The Seller will take reasonable steps to meet the delivery date set out on the order or as otherwise agreed between the Seller and the Customer in writing. However, occasionally delivery may be affected by factors beyond the Seller's control and so cannot be guaranteed. The Seller will let the Customer know if the Seller becomes aware of an unexpected delay and will arrange a new delivery date with the Customer.
- 6.4 If the Customer fails to take delivery of the Goods then without prejudice to any other right or remedy available to the Seller:
  - 6.4.1 delivery of the Goods shall be deemed to have been completed at the time the Customer failed to take delivery; and
  - 6.4.2 the Seller may store the Goods until actual delivery and charge the Customer for the reasonable costs, including insurance and storage; or
  - 6.4.3 the Seller may sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for any excess over the price payable or charge the Customer for any shortfall below that price.
- 6.5 The Seller may deliver the Goods by instalments which shall be invoiced and paid for separately. Each instalment shall constitute a separate supply of Goods. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.6 If the Customer requires the Goods to be delivered these will be delivered at the Customer's cost.

- 6.7 If the Customer requests delivery to a site or its premises for specific times whilst the Seller will endeavour to meet these requests, the Seller will not guarantee these times and accepts no liability if these times are not met due to circumstances outside the Seller's control.
- 6.8 The Seller or the Seller's representative will deliver to kerb side and accepts no responsibility for damage to property if required to enter a site. The Seller or the Seller's representative will only unload if assisted by the Customer or the Customer's representatives. It is the Customer's responsibility to ensure that the Goods can be unloaded in a safe and efficient manner including the unloading of heavy items. The Seller reserves the right to charge the Customer at cost for any unreasonable delay in unloading.
- 6.9 The Seller reserves the right to charge the Customer for the following:
- 6.9.1 for standing time resulting in a delay to unloading;
  - 6.9.2 for any expenses incurred including loss of productivity where the Customer postpones a planned delivery within 24 hours of the agreed delivery date;
  - 6.9.3 for 50% of the value of a cancelled order should the Customer cancel a delivery within 24 hours prior to the agreed delivery date.
- 6.10 The Seller will not accept any claim for damages in transit, shortages or non-delivery items unless communicated to the Seller within 24 hours of the delivery date.
- 6.11 Goods that are damaged on arrival should be returned to the Seller and either replacement Goods or a refund will be made at the discretion of the Seller.

## **7 QUALITY & LIABILITY**

- 7.1 All plants offered for sale at the Plant Centre cash and carry facility will be to the relevant "British Standards."
- 7.2 All Goods will be of satisfactory quality and fit for purpose for which the Goods are commonly supplied.
- 7.3 All Goods are at the Customer's risk from the point of sale.
- 7.4 The Seller gives no warranty as to the growth or productiveness of the Seller's Goods.
- 7.5 It is the Customer's responsibility when purchasing from the Plant Centre cash and carry facility to ensure that the Goods purchased are visibly free from infection, infestation or diseases or that the Goods selected are not of a type known to be poisonous or of a type having injurious, hazardous or irritating properties.
- 7.6 Once Goods have been purchased by the Customer in no circumstances can the Seller be held responsible for defects of Goods caused by adverse weather conditions, accident or failure to tend or improper use by the Customer.
- 7.7 Subject to clause 6.10, complaints can only be considered by the Seller if notified by the Customer in writing within 5 days of purchasing the Goods.
- 7.8 In no circumstances shall the liability of the Seller to the Customer exceed the invoice value of the Goods.
- 7.9 Subject to clause 7.11, the Seller shall be under no liability for any loss, damage or injury howsoever arising, resulting from the misuse or conversion of the Goods supplied.
- 7.10 The Seller shall not be responsible for losses that result from our failure to comply with these Terms including, but not limited to, losses that fall into the following categories:
- 7.10.1 loss of income or revenue;
  - 7.10.2 loss of business;
  - 7.10.3 loss of anticipated savings; or

7.10.4 any waste of time.

However, this clause 7.10 shall not prevent claims for foreseeable loss of, or damage to, the Customer's physical property.

7.11 This clause does not include or limit in any way the Seller's liability for:

7.11.1 death or personal injury caused by the Seller's negligence; or

7.11.2 fraud or fraudulent misrepresentation; or

7.11.3 any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

7.11.4 losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or

7.11.5 any other matter for which it would be illegal or unlawful for the Seller to exclude or attempt to exclude its liability.

## 8 **TERMINATION**

Without limiting the Seller's other rights or remedies, the Seller may terminate or suspend the supply of Goods with immediate effect by giving written notice to the Customer if:-

8.1 the Customer commits any continuing or material breach of any provision of these Terms and in the case of such a breach which is capable of remedy fail to remedy the same within 7 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

8.2 an encumbrancer takes possession or a receiver (or similar office holder) is appointed over any of the Customer's property or assets;

8.3 the Customer makes any voluntary (or similar) arrangement with its creditors, is declared bankrupt or is subject to insolvency proceedings in any jurisdiction;

8.4 the Customer ceases, or threatens to cease, to carry on business; or

8.5 the Customer fails to pay any amount due for Goods on the due date for payment.

8.6 If any of the events set out in this clause 8 occur, the Seller shall be entitled to cancel the supply of Goods hereunder or suspend any further deliveries without liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 9 **RETURNS**

9.1 By paying the invoiced amount the Customer confirms receipt of the Goods.

9.2 If the Customer considers the Goods to be defective the Customer must notify the Seller and forward clear photographs of the defects. The Seller will examine the photographs and notify the Customer of any right to refund within a reasonable period of time. The Seller will usually process any refund due within 30 days of the Seller notifying the Customer of their entitlement to a refund. The price of defective goods agreed by the Seller will be refunded in full including a refund for the delivery charges for sending the item to the Customer.

9.3 Once purchased, plants may not be returned to the nursery if the customer changes their mind. All plants grown on the nursery are inspected weekly for any pests and disease, and may be quarantined and treated accordingly. All plants brought in from other nurseries will have been inspected by DEFRA at the point of import and will be pest and disease free. For plant hygiene and plant passport purposes we are unable to accept any returns as we do not have knowledge of how they have been treated once they have left the nursery.

9.4 The Seller's goodwill refund policy (as set out in clause 9.3) does not apply to any plants surplus to the Customer's requirements.

## 10 **STOCK AVAILABILITY**

- 10.1 The Seller cannot guarantee the availability of any Goods that the Customer may require. Requests for specific Goods must be placed with the Seller at least 5 working days in advance of when the Goods are required and confirmed in writing. The Seller will endeavour to meet specific requests for Goods but cannot guarantee availability and shall be under no liability for any loss, damage or injury howsoever arising, resulting from the inability to supply specific requests for Goods.

## 11 **PARKING**

- 11.1 Purchasing and parking on the Seller's premises is done entirely at the risk of the Customer, the Customer's authorised user and any person accompanying them save for liability for personal injury or death arising from the Seller's negligence.

## 12 **GOVERNING LAW AND JURISDICTION**

- 12.1 These Terms are governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts in the event a dispute arises concerning these Terms.

## 13 **FORCE MAJEURE**

- 13.1 The Seller shall not be liable for any delay or failure to perform any of its obligations under these Terms if the delay or failure results from events or circumstances beyond its reasonable control, including but not limited to acts of God, strikes, accidents, war, fire, breakdown of vehicles, shortage or unavailability of Goods or adverse weather conditions or adverse.

## 14 **THIRD PARTIES**

- 14.1 The parties agree that the Contracts (Rights of Third parties) Act 1999 shall not apply to these Terms.

## 15 **SEVERANCE**

- 15.1 If any provision of these Terms is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable that provision shall be limited or eliminated to the minimum extent necessary so that the remaining provisions of these Terms will remain in full force and effect.

## 16 **GENERAL**

- 16.1 Each party acknowledges that these Terms contain the entire agreement between the Seller and the Customer and that the Customer has not relied on any verbal or written representations made by the Seller or its employees or agents.
- 16.2 Any notice or other information required or permitted to be given under these Terms shall be deemed to have been validly given if served personally on that party or if sent by first class pre-paid post to the last known address of that party. If sent by first class pre paid post the notice shall be deemed to have been received 2 days after the date of posting. If any such notice or other information is given by means of facsimile then notice shall be deemed to have been received on the same day if sent during normal working hours or on the next working day where sent outside such hours.
- 16.3 No variation of these Terms shall be binding unless made in writing and signed by the Customer and the Seller.
- 16.4 No waiver by the Seller of any breach of these Terms by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions.