



# JOHNSONS OF WHIXLEY

PROFESSIONAL NURSERYMEN

## Terms of Business

### Terms & Conditions under which Johnsons will purchase from a supplier

#### Definitions

1.1 In these Contract Terms:

"Buyer" means Johnsons of Whixley Limited (Company Registration 616324);

"Contract Terms" means these terms and conditions of purchase and includes any special terms agreed in writing between the Buyer and the Seller;

"Contract" means each contract for the sale and purchase of the Goods and the supply and acquisition of the Services on these Contract Terms;

"Goods" means the goods (including any instalment, component, part of or raw materials used in such goods) described in the Order;

"Order" means the Buyer's purchase order to which these Contract Terms are annexed;

"Price" means the price of the Goods and/or the Services;

"Seller" means the person, firm or company so described in the Order;

"Services" means the services (if any) described in the Order;

"Specification" includes any plans, drawings, data, description or other information relating to the Goods and/or Services; and

"Writing" includes facsimile or email transmission and "written" shall be construed accordingly.

1.2 Any reference to a statutory provision includes a reference to any modification or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it.

#### Basis of purchase

The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Contract Terms.

Any of the following are deemed to constitute the Seller's agreement to comply with these Contract Terms:

any offer and/or acceptance of an Order by the Seller (notwithstanding any conditions attached to such offer or acceptance or any purported incorporation of terms other than these Contract Terms);

the commencement of any work by the Seller; or

the delivery of any Goods or the performance of any Services by or on behalf of the Seller.

These Contract Terms shall apply to each Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

No variation to the Order or these Contract Terms shall be binding unless agreed in writing by a member of the Johnsons of Whixley Ltd Board of Directors.

#### Specifications and inspections

The quantity, quality and description of the Goods and the Services shall be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.

All Goods supplied must comply with Horticultural Trades Association National Plant Specifications in all respects.

The Seller shall allow the Buyer during normal working hours to inspect and test the Goods during production, processing or storage at the premises of the Seller or any third party prior to despatch and to test the Services during performance. Any inspection or testing by the Buyer shall not relieve the Seller of its obligations under the Contract.

If as a result of inspection or testing the Buyer is not satisfied that the Goods and/or Services will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

#### Price and payment

The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

exclusive of any applicable VAT (which shall be payable by the Buyer subject to receipt of a VAT invoice); and inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Buyer's specified delivery address and any duties, imposts or levies other than VAT.

No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Buyer.

The Buyer shall be entitled to any discount for prompt payment, bulk purchase, volume or purchase customarily granted by the Seller. In the absence of any other written agreement the Buyer shall be entitled to take a discount of 2% for payment within 14 days of receipt of invoice.



Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services by the due date if stated, or within 60 days after the receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.

Time of payment shall not be of the essence of the Contract.

The Buyer shall be entitled to deduct from the Price:

any amount which is disputed by the Buyer, pending resolution of such dispute;

and any sums owing by the Seller to the Buyer or any other company within the Seller's group on any contract.

#### Information

5.1 The Seller shall provide to the Buyer on request such information about the Goods, and any components, parts or raw materials used in producing the Goods as the Buyer considers necessary including information relating to any possible risks to health and safety presented by the Goods.

#### Delivery

The Goods shall be delivered to, and the Services shall be performed at, the address specified by the Buyer on the date or within the period stated in the Order, in either case during the Buyer's usual business hours (0730 – 1630 Mon – Thurs, 0730 – 1230 Friday). The Buyer reserves the right to amend any delivery instructions. Delivery shall be deemed to be made on receipt of the Goods and/or the Services by the Buyer in accordance with all terms of the Contract. Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

Time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

A delivery note stating the number of the Order, full description and quantity of Goods supplied, plant passport numbers, Intrastat numbers and values, all relevant packaging information (including number of pallets, CCH trolleys (which must be padlocked) shelves and extensions), delivery address and Seller's invoice number must accompany each consignment of the Goods and must be displayed prominently. A copy must be faxed to the Purchasing Department of the Buyer not less than 48 hours prior to delivery or collection stating the intended time of delivery or collection.

The Buyer shall not accept delivery or performance by instalments unless previously agreed in writing. If Goods are to be delivered or Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.

#### Acceptance

The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

The Buyer shall be entitled to reject all or any part of the Goods delivered or Services performed which are not in accordance with the Contract, including a right to reject defective Goods even if the defect is minor.

The Buyer shall not be deemed to have accepted any Goods and/or Services until the Buyer has had a reasonable time to inspect or test them following delivery or, if later, within a reasonable time after any latent defect has become apparent.

The Buyer shall not be deemed to have accepted the Goods merely by virtue of its having sold the Goods to a third party upon or after delivery or its having incorporated or converted them into other products or works.

The Buyer shall not be deemed to have accepted the Goods or Services by virtue of having required the Seller to repair or replace Goods or Services under these Contract Terms.

The Seller shall remove any packaging material or any Goods rejected by the Buyer within 7 working days, after which the Buyer reserves the right to remove or destroy the Goods, the cost of which will be debited to the Seller.

Plants showing inherent disease symptoms within 200 days of delivery will be rejected and all purchase costs reclaimed.

#### Risk and Property

Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract. The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

#### Compliance

The Seller shall comply with all applicable regulations (including the General Product Safety Regulations 1994) and other legal requirements concerning the manufacture, packaging, labelling, packing and delivery of the Goods and performance of the Services and concerning hazardous substances. Any Goods that are hazardous shall be appropriately marked, packed and carried.

#### Warranties

The Seller warrants to the Buyer that it is fully experienced, qualified, equipped, organised and financed to perform its obligations under the Contract, and warrants to the Buyer that the Goods:

will be of satisfactory quality and fit for all purposes for which the Goods are commonly supplied;

will be free from defects in design, material and workmanship; will correspond with any relevant Specification or sample;

will comply with all statutory requirements, regulations and EU regulations relating to the manufacture and sale of the Goods, product safety, packaging, labelling (including the appropriate British Standard or equivalent specification unless otherwise agreed);

and will comply with the general requirements of safety in terms of risk presented to the health and safety of persons.

The Seller warrants to the Buyer that the Services:

will be performed by appropriately qualified and trained personnel, with due care and diligence and to such standards of quality as it is reasonable for the Buyer to expect in all the circumstances; and

will comply with all statutory requirements, regulations and EU regulations relating to the performance of the Services.

The warranties set out in this Contract Term shall continue in force (notwithstanding acceptance by the Buyer of all or any part of the Goods or Services) for 24 months from the date of first use of the Goods or completed performance of the Services in question.

#### Certain rights and remedies on default

Each right or remedy of the Buyer is without prejudice to any other right or remedy of the Buyer, whether or not under the Contract.

If Goods are not delivered in whole or in part or Services are not performed on the due date then the Buyer shall be entitled to cancel the Order (or any part) without liability to the Seller and purchase substitute items or services elsewhere and recover from the Seller any loss or additional costs incurred.

If any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled at any time within the 24 month period from the date of first use and/or completed performance of the Goods and Services:

to require the Seller to repair the Goods or (at the Buyer's sole option) to supply replacement Goods or Services in accordance with



the Contract within [seven] days (and the provisions of this Contract Term shall apply to any such repaired or replaced Goods or Services); or

whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

#### **Indemnity**

The Seller shall indemnify the Buyer in full against all liabilities, losses (whether direct or indirect and including loss of profits), damages (including special and consequential damages), costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

breach of any warranty given by the Seller in relation to the Goods or the Services; any claim that the Goods infringe, or their importation, use or resale, infringes the patent, copyright, registered or unregistered design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

any claim made against the Buyer in respect of any breach or alleged breach by the Buyer of any statutory provision, regulation or by-laws or other rule of law arising from the acts or omissions of the Seller or its employees, agents or subcontractors;

any liability under the Consumer Protection Act 1987, the General Product Safety Regulations 1994, under any regulations relating to hazardous substances or under the Environmental Protection Act 1990 in respect of the Goods and/or the Services;

and any act or omission of the Seller or its employees, agents or subcontractors in supplying, delivering and installing the Goods and in performing the Services, including any injury, loss or damage to persons caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the Buyer).

#### **Force Majeure**

Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure was beyond that party's reasonable control.

#### **Termination**

The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance without incurring any liability to the Seller other than to pay for Goods and/or Services already delivered or performed at the time of such notice.

The Buyer shall be entitled to terminate the Contract without liability to the Seller and reserving all rights of the Buyer by giving notice to the Seller at any time if:

(without prejudice to any other Contract Term) the Seller is in breach of any of its obligations under these Contract Terms;

the Seller has voluntarily with its credit (within the meaning of the Insolvency Act 1986) be subject administration order the Buyer reasonably believes that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

#### **Confidentiality**

All information supplied to the Seller by the Buyer at any time in connection with the award of the Contract, the Contract and any Specification is and remains the Buyer's property and shall be regarded as confidential.

#### **General**

The Seller shall at all times maintain adequate insurance cover with a reputable insurer against its liability under the Contract and shall produce the policy and latest premium receipt to the Buyer on demand.

The Order is personal to the Seller and the Seller shall not transfer, assign, charge, dispose of or deal with in any manner or purport to do the same any of its rights or beneficial interests.

The Seller shall not sub-contract any of its obligations under the Contract.

Any notice to be given by either party to the other under these Contract Terms must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes.

Any waiver by the Buyer of any breach is not a waiver of any subsequent breach.

Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.

If any provision of these Contract Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Contract Terms and the remainder of the provision in question shall not be affected.

The laws of England shall govern the Contract, and the parties submit to the non-exclusive jurisdiction of the English Courts.

The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

