



# JOHNSONS OF WHIXLEY

PROFESSIONAL NURSERYMEN

## Terms of Business

### Terms & Conditions under which Johnsons will sell to a buyer

Comprehensive terms of business are listed on the company web site to be found at [www.nurserymen.co.uk](http://www.nurserymen.co.uk)

The following details reflect the general terms, but the placing of an order implies that the comprehensive web site terms of trade have been reviewed and are accepted.

Throughout these terms "Seller" means Johnsons of Whixley Limited and "Buyer" means a buyer of plants or other goods. These conditions are the basis of any contract between the Company and the Customer, irrespective of market sector, and will take precedence over any terms listed in the Customer's Standard Conditions of Purchase.

### 1) GENERAL TERMS & SCOPE

1a) These terms cancel all previous published terms and expire at 31st December 2010. Due to the possibility of unexpected increases in wages and other expenses, the right is reserved to increase prices without notice.

1b) These terms are applicable only to bona fide members of the Horticultural Industry and official purchasers on behalf of Local Authorities etc. Orders from the general public cannot be accepted.

1c) All plants will be supplied to the relevant British Standard and the HTA Certification Scheme and in the majority of cases will exceed that specification. Plant handling will be to the standards set by the Committee on Plant Supply and Establishment code of practice for plant handling unless otherwise agreed. It is essential that the customer also obeys this code of practice in order to achieve maximum success.

1d) All plants are believed to be true to name, but in the event of an error on our part, our liability to pay charges or compensate for any such breach of contract shall not exceed the invoice price of the plant in question. No claim for loss of profit or other expenses incurred in excess of the invoice value of the plants will be considered. Please ensure that your vehicle has a cover to protect plants when collecting, and plants are also protected and watered on site prior to planting.

1e) The Seller shall not be liable to the Buyer or deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the Seller's reasonable control.

1f) No variation of these Conditions shall be binding unless agreed to in writing between the authorised representatives of the Buyer and the Seller.

1g) No waiver by the Seller of any breach of the contract by the Buyer shall be considered a waiver of any subsequent breach of the same or any other provision.

1h) Unless agreed otherwise in writing the company shall under no circumstances have any liability of whatever kind for:

any defects resulting from weather, accident, failure to tend, or improper use by the customer except in accordance with the instructions or advice of the company or the manufacturer of any goods or neglect of any instruction or materials provided by the customer or good horticultural practice; the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were communicated to the Company; any descriptions, illustrations, specifications, figures as to performance, drawings, and particulars of weight and dimensions submitted by the company contained in the company's catalogues, price lists or elsewhere since they are merely intended to represent a general concept of the goods and not to form part of the contract or be treated as representations; any technical information, recommendation statements or advice furnished by the company, its servants or agents not given in writing in response to a specific written request from a customer before the contract is made; any variations in the quantities or dimensions of any goods or of their specifications or substitution of any type or species, if the variation or substitution does not materially effect the characteristics of the goods, and the substituted materials or components are of a quality equal or superior to those originally specified. During periods of inclement weather including storm, drought, freezing temperatures or excessive heat the company may in its absolute discretion without bringing itself into breach of contract for failure to perform withhold or delay indefinitely the delivery of any goods ordered by the customer.

1i) If, within 5 days of delivery, the customer complains to the company in writing that any goods have not been delivered, have been delivered dead or damaged, are not of the correct quantity or do not comply with their description the company shall, at its option, replace with similar goods any goods which are dead, missing, lost or damaged or do not comply with their description, allow the customer credit for their invoice value or tend any damaged goods.

1j) Where the company is liable in accordance with this condition in respect of only some or part of the goods the contract shall remain in full force and effect in respect of the other or other parts of the goods and no set-off or other claim shall be made by the customer against or in respect of such or other parts of the goods.

1k) The company shall not be liable where any goods the price of which does not include carriage are lost or damaged in transit and all claims by the customer shall be made against the carrier. Replacements for such lost or damaged goods will, if available, be supplied by the company at the prices ruling at the time of dispatch.



1l) In no circumstances shall the liability of the company to the customer under this contract exceed the invoice value of the goods.

1m) Pursuant to clause Section 1(2)(a) Contracts (Rights of Third Parties) Act 1999 the parties intend that no term of this Agreement may be enforced by a Third party. These terms apply in relation to any contract formed between the Seller and the Buyer to the exclusion of any other terms and conditions which the Buyer purports to apply under any purchase order or similar.

1n) Nothing in these terms excludes or limits the Sellers' liability for death or personal injury caused by the Sellers' negligence or any fraudulent representation made on the Sellers' part.

1o) The Seller shall not be liable for any pure economic loss, loss of profit or loss of business which may be suffered or incurred by the Buyer and which arises out of or in connection with the contract.

1p) The Customer Charter does not form part of the contract and is principally a statement of how the Seller and the Buyer intend to comply with their respective obligations.

1q) Any product descriptions issued or samples supplied by the Seller are intended as an approximate indication only of relevant products and therefore a sale of products under these terms is not deemed to be a sale by description or sample.

1r) The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in these terms.

1s) The liability for errors on pre-printed labels is limited to the postage of correctly re-printed labels and/or bar codes and not to their delivery and application to the relevant goods.

## 2) QUOTATIONS

Quotations by the company unless otherwise stated in them shall be open for acceptance within 30 days of the date of the quotation and shall in any event be subject to written acceptance by the Seller of any order submitted by the Buyer.

## 3) ORDERING PROCEDURE

3a) New customers are requested to send 2 appropriate trade references and a bank reference with first order. Orders will not be processed until satisfactory credit references have been obtained. Alternatively, cash/credit card on collection is acceptable. (Not American Express).

3b) The acceptance of an order does not bind the Company to the supply of every item, although we will use our best endeavours to do so. All stock offered is subject to availability, satisfactory growth, grading, and survival during the period prior to despatch.

3c) Telephone orders must be confirmed in writing within 3 days. The Buyer shall be responsible for ensuring the accuracy of any order placed with the Seller.

3d) The supplier shall not be responsible for the failure of any means of electronic messaging to impart information of any kind either to or from the customer.

## 4) PRICING PROCEDURE

4a) Not less than 10 plants of one variety and size will be supplied at the 25 rate and 50 at the 100 rate. 1-9 plants of the same variety will be priced at the unit rate. We strongly recommend that orders under £500.00 value be placed with our Wholesale Plant Centre.

4b) Prices do not include delivery, an appropriate charge will be levied according to the size of order, the delivery location, the possible use of ferries, and the potential to incorporate other orders on the delivery vehicle. Standard delivery charges for this season:

i) Delivery Charge Nationwide – £60-£80

ii) Deliveries within 75 mile radius – free delivery over £2000

iii) Deliveries outside 75 mile radius – free delivery on loads/orders over £4000

iv) Customers not returning wooden crates will be charged at £10/crate.

v) All metal crates will be left on site for 5 days, any crates not available for collection at the end of this period will be charged for at £10/day whilst they remain unavailable for collection JoW will not be held responsible for plants left in the crates 3 days or more after delivery. (Collection of the crates is at JoW's discretion) Please note the above charges in no way reflect the true cost of delivery. **The above delivery charges relate to JoW having some discretion when they can deliver.** If customers want guaranteed delivery to a specific place at a set time this delivery will be charged at cost. JoW reserves the right to turn down an order or cancel a contract if the delivery cannot be done economically. Further details available from the Amenity Sales department.

4c) A late payment credit surcharge of 10% will be levied on all orders delivered to the customer's required delivery address which may be deducted for payment before expiry of 30 days from the date of invoice. A late payment credit surcharge of 10% will be levied on consignments collected at the nursery which may be deducted for payment before expiry of 60 days from the date of invoice.

4d) The application of credit charges shall in no way imply an invitation to take extended credit. Requests for variations to the agreed credit period must be made in writing prior to delivery.

4e) A special discount of 2.5% will be allowed for payment on collection of single consignments over £500 goods value unless discount terms have been arranged (Not applicable to Wholesale Plant Centre purchases).

4f) The contract shall be governed by the laws of England and the Buyer and Seller hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.

4g) Where the Company is requested to attend upon a site inspection or plant inspection not referred to at the time of tender, it shall have an absolute discretion to charge for all costs arising therefrom.

4h) Where the Company is requested to delay or withhold delivery by the Customer for any reason the Company may in absolute discretion charge for any costs arising there from.

4i) The company will take immediate legal action to recover outstanding debts and costs incurred as a result of late payment, dishonoured or represented cheques.

## 5) DELIVERY/COLLECTION

5a) Any complaint should be made on arrival of a consignment containing perishable items and no later than 5 days after delivery and confirmed in writing.

5b) The Company shall have no liability with regard to any claim in respect of which the customer has not complied with the claims procedure in these conditions.

5c) All goods are despatched at purchaser's risk unless otherwise instructed.

5d) The customer is responsible for all off-loading of goods and where root-balled trees, loaded pallets, or similarly sized or weighted goods are delivered by the company it shall be the responsibility of the customer to ensure that the appropriate equipment and operator is available for off-loading purposes and that such equipment and its' operator comply with all relevant legislative requirements.



5e) Where APPROPRIATE EQUIPMENT and/or its operator are unavailable the company shall be under no obligation to attempt to off-load, and subsequent costs will be charged.

5f) The company may in its absolute discretion charge the customer for standing time where off loading is delayed for whatever reason at the rate of £30 per hour for vehicles up to 20 tonnes and £50 per hour over 20 tonnes.

5g) Where and when appropriate, an industry agreed 'fuel escalator' charge mechanism may be implemented to reflect increased costs as a result of fuel price variations.

5h) All returnable metal stillages and pallets supplied by Johnsons of Whixley remain the property of the company and must be returned in good condition or alternatively paid for in full. Each stillage/pallet unavailable for collection 5 working days after delivery will be charged at £15 per day plus transport. It is essential that as soon as the stillages/pallets are emptied you inform us immediately so that collection can be arranged. Loss of or damage to a pallet/stillage will be charged at £240 or pro rata for parts of pallets/stillages. The company will not collect pallets/stillages which contain rubbish or waste material, including packaging and pots. Should crates be returned containing waste material a fee of £25.00 per crate will be charged.

5i) Any dates or times quoted for delivery of the goods are approximate only and the seller shall not be liable for any delay in delivery of the goods however caused.

5j) Customers instructing our vehicle drivers off the public highway do so entirely at their own risk and expense. All deliveries will normally be made by commercial vehicles up to and including articulated lorries and trailers to 18m overall length. Delivery drivers will do their utmost to deliver to the requested location but the driver's decision as to the safe operation of the vehicle is final.

## 6) PAYMENT

6a) All prices quoted are exclusive of V.A.T. which will be added where applicable at the prevailing rate. The Company V.A.T. registration number is GB 168 9675 93.

6b) All accounts must be cleared by the due date as stated on the invoice. The date by which payment must be made will be of the essence of each contract.

6c) If the Buyer cancels all or part of any order required for delivery between October 1st. and December 31st. and not yet executed, he will agree to pay the Seller 30% of the value. Between January 1st and February 28th, the liquidated damages for cancellation will be 50% of invoice value. Between March 1st. and September 30th. the invoice value of cancelled orders will become payable in full. Orders not accepted for delivery within 90 days of order, or within 30 days of an agreed delivery date, will be deemed to have been cancelled and liquidated damages become payable at the above rates.

6d) Plants purchased by the supplier specifically to satisfy the requirements of an order and subsequently cancelled will be invoiced in full irrespective of the date of order or the required delivery date.

6e) Cheques returned or payments refused for any purpose at the first and subsequent presentations will be charged for at the cost of administration.

6f) Reservation of title. The risk in the goods passes to the Buyer upon delivery, but title to the goods shall remain vested in the Seller until full payment has been received, each delivery being considered as a whole.

6g) The company reserves the right to withhold further supplies in the event of agreed credit limits being exceeded.

6h) Where customer permission has been granted to take payment from a credit card, it is agreed that in the event of non-payment of account by the due date by other means, the company shall be allowed to charge the outstanding debt to the credit card of the debtor.

NB. The placing of an order implies acceptance of the above terms, together with the comprehensive full terms displayed on the company web site at [www.nurserymen.co.uk](http://www.nurserymen.co.uk)

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