



JOHNSONS

OF WHIXLEY

PROFESSIONAL NURSERYMEN

Terms of Business

Conditions of Purchase

Definitions

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 e-mail 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 0 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 0 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 bye-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 sub-contractors 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 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.





JOHNSONS

O F W H I X L E Y

PROFESSIONAL NURSERYMEN

Terms of Business

Conditions of Sale

Throughout these terms "Seller" means Johnsons of Whixley Limited and "Buyer" means a buyer of plants or other goods.

1) GENERAL TERMS & SCOPE

1a) These terms cancel all previous published terms and expire at 31st December 2009. 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.

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

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