

# **TRADING TERMS & CONDITIONS OF SALE.**

## **CONDITIONS OF SALE**

### **1. INTERPRETATION**

1.1 In these conditions;

'BUYER' means the person who accepts a quotation from Erith Horticulture Ltd for the sale of Goods or whose order for the Goods is accepted by Erith Horticulture Ltd.

'GOODS' means the goods (including any instalment of the goods or parts for them) which Erith Horticulture Ltd is to supply in accordance with these conditions.

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Erith Horticulture Ltd. 'CONTRACT' means the contract for the purchase and sale of the Goods.

'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

### **2. BASIS OF SALE**

2.1 Erith Horticulture Ltd shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of Erith Horticulture Ltd which is accepted by the Buyer or any written order of the Buyer which is accepted by Erith Horticulture Ltd, subject in either case to the goods being available and also to these conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or alleged to be accepted, or any such order is made or alleged to be made, by the Buyer. .

2.2 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Erith Horticulture Ltd and these conditions replace all previous conditions used by Erith Horticulture Ltd.

2.3 Erith Horticulture Ltd employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Erith Horticulture Ltd in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice given by Erith Horticulture Ltd or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Erith Horticulture Ltd is followed or acted upon entirely at the Buyer's own risk and accordingly Erith Horticulture Ltd shall not be liable for any such advice which is not so confirmed.

2.5 Any clerical or other error or omission in any sales literature, quotation, and price list, acceptance of offer, invoice or information issued by Erith Horticulture Ltd shall be subject to correction without any liability on the part of Erith Horticulture Ltd.

2.6 Erith Horticulture Ltd reserves the right to seek credit references from the Buyer and in appropriate cases to obtain credit insurance before entering into any contract.

### **3. ORDERS AND SPECIFICATIONS**

3.1 The Buyer shall be responsible to Erith Horticulture Ltd for ensuring the accuracy of the terms of an order (including any applicable specification) submitted by the Buyer, and for giving Erith Horticulture Ltd any necessary information relating to the Goods within a sufficient time to enable Erith Horticulture Ltd to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in Erith Horticulture Ltd quotation (if accepted by the Buyer's) or the Buyer's order (if accepted by Erith Horticulture Ltd).

3.3 If the goods are to be manufactured or any process is to be applied to the Goods by Erith Horticulture Ltd in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Erith Horticulture Ltd against all loss, damages, costs and expenses awarded against or incurred by Erith Horticulture Ltd in connection with or paid or agreed to be paid by Erith Horticulture Ltd in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Erith Horticulture Ltd use of the Buyer's specification.

3.4 Erith Horticulture Ltd reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to Erith Horticulture Ltd specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by Erith Horticulture Ltd may be cancelled by the Buyer except with the agreement in Writing of Erith Horticulture Ltd and on terms that the Buyer shall indemnify Erith Horticulture Ltd in full against all loss (including loss of profit) cost (including the cost of all labour and materials used), damages, charges and expenses incurred by Erith Horticulture Ltd as a result of cancellation.

#### **4. PRICE OF THE GOODS**

4.1 The price of the Goods shall be Erith Horticulture Ltd quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in Highlight Horticulture Ltd published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the U.K., Erith Horticulture Ltd published export price list shall apply.

4.2 Erith Horticulture Ltd reserves the right, to increase the price of the Goods to reflect any increase in the cost to Erith Horticulture Ltd which is due to any factor beyond the control of Erith Horticulture Ltd (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any changes in delivery dates, quantities or specifications for the goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Erith Horticulture Ltd adequate information or instructions. It shall be the Buyer's obligation to verify the price at which the goods are purchased.

4.3 Except as otherwise stated under the terms of any advice, quotation or in any price list of Erith Horticulture Ltd, all prices are given by Erith Horticulture Ltd on a delivered basis to the Buyer's address or to an address nominated by the Buyer.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay Erith Horticulture Ltd.

#### **5. TERMS OF PAYMENT**

5.1 Subject to any special terms agreed in writing between title Buyer and Erith Horticulture Ltd, Erith Horticulture Ltd shall be entitled to invoice the Buyer for the price of the Goods on or at any time after dispatch of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Erith Horticulture Ltd shall be entitled to invoice the Buyer for the price at any time after Erith Horticulture Ltd has notified the Buyer that the Goods are ready for collection or (as the case may be) Erith Horticulture Ltd has tendered delivery of the Goods.

5.2 Subject as hereinafter provided and unless otherwise stated on Erith Horticulture Ltd invoice or unless earlier demand for payment is made by Erith Horticulture Ltd as set out below, the Buyer shall pay the price of the Goods within 28 days of the date of Erith Horticulture Ltd invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Furthermore the Buyer shall not be entitled to withhold payment of any amount due by reason of any dispute or claim nor shall the Buyer be entitled to set off against any amount payable to Erith Horticulture Ltd any amount which is due now or in the future or for which Erith Horticulture Ltd disputes liability. The time of payment of the price shall be the essence of the contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Erith Horticulture Ltd, Erith Horticulture Ltd shall be entitled to :-

5.3.1. Cancel the Contract or suspend any further deliveries to the Buyer

5.3.2. Appropriate any payment by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Erith Horticulture Ltd) as Erith Horticulture Ltd may think fit (notwithstanding any purported appropriation by the Buyer): and

5.3.3. Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest):

5.3.4. Cancel any settlement discount.

## **6. DELIVERY**

6.1 Delivery of Goods shall be made by Erith Horticulture Ltd delivering the Goods to the Buyer's address or to an address nominated by the Buyer or as near as hard roads and access permit.

6.2 Any dates quoted for delivery of the Goods are approximate only and Erith Horticulture Ltd shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by Erith Horticulture Ltd in writing.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by Erith Horticulture Ltd to deliver anyone or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If Erith Horticulture Ltd fails to deliver the Goods for any reason other than any cause beyond Erith Horticulture Ltd.'s reasonable control or the Buyer's fault, and Erith Horticulture Ltd is accordingly liable to the Buyer, Erith Horticulture Ltd.'s liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Erith Horticulture Ltd.'s fault) then, without prejudice to any other right or remedy available to Erith Horticulture Ltd, Erith Horticulture Ltd may: -

6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage:

Or

6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7. RISK & PROPERTY**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer,

7.1.1 in the case of Goods to be delivered at Erith Horticulture Ltd.'s premises, at the time when Erith Horticulture Ltd notifies the Buyer that the Goods are available for collection: or

7.1.2 in the case of Goods to be delivered otherwise than at Erith Horticulture Ltd.'s premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the Goods, the time when Erith Horticulture Ltd has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any provision of these Conditions, the property in the Goods shall not pass to the Buyer until Erith Horticulture Ltd has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by Erith Horticulture Ltd to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Erith Horticulture Ltd.'s fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Erith Horticulture Ltd.'s property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to Erith Horticulture Ltd for the proceeds of sale or otherwise of the Goods, whether tangible, including insurance proceeds and shall keep all proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Erith Horticulture Ltd shall be entitled at any time to require the Buyer to deliver the Goods to Erith Horticulture Ltd and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Erith Horticulture Ltd, but if the Buyer does so all monies owing by the buyer to Erith Horticulture Ltd shall (without prejudice to any other right or remedy of Erith Horticulture Ltd) forthwith become due and payable.

## **8. WARRANTIES AND LIABILITY**

8.1 Subject to the conditions set out below Erith Horticulture Ltd warrants that the Goods manufactured and/or sold by the Company are fit for the normal purpose for which they have been designed and where applicable conform to the relevant British Standard.

8.2 The above warranty is given by Erith Horticulture Ltd subject to the following conditions:

8.2.1 Erith Horticulture Ltd shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer,

Erith Horticulture Ltd shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Erith Horticulture Ltd.'s instructions (whether oral or in writing), misuse or alteration or repair of the goods without Erith Horticulture Ltd.'s approval:

8.2.2 Erith Horticulture Ltd shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment:

8.2.3 The above warranty does not extend to parts, materials or equipment not manufactured by Erith Horticulture Ltd in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Erith Horticulture Ltd.

8.3 Subject as expressly provided in these conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), or where the provisions of the Consumer Protection Act 1987 would impose liability, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications or shortage shall (whether or not delivery is refused by the buyer) be notified to Erith Horticulture Ltd within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure or shortage. Goods shall only be rejected with Erith Horticulture Ltd.'s written consent and in any event if delivery is not refused and the Buyer does not notify Erith Horticulture Ltd accordingly, the Buyer shall not be entitled to reject the Goods and Erith Horticulture Ltd shall have no liability for such defect or failure or shortage and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.

8.6 Where any valid claim in respect of any of the Goods which is based On any defect in the quality or condition of the Goods or their failure to meet specification or in respect of any breach of any implied warranty condition or other or any duty at common law on the part of Erith Horticulture Ltd is notified to Erith Horticulture Ltd in accordance with these conditions, Erith Horticulture Ltd shall be entitled to settle such claim by supplying to the Buyer Goods of the same specification and quality as those originally ordered free of charge or, at Erith Horticulture Ltd.'s sole discretion, refund to the Buyer the price of the Goods (or a proportion of part of the price), but Erith Horticulture Ltd shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by Erith Horticulture Ltd.'s negligence or death, personal injury or damage to property caused by defective product for which the Erith Horticulture Ltd is liable under the Consumer Protection Act 1987 and for which there is no defence under that Act, Erith Horticulture Ltd shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of Erith Horticulture Ltd, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.

8.8 Erith Horticulture Ltd shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Erith Horticulture Ltd.'s obligations in relation to the Goods, if the delay or failure was due to any cause beyond Erith Horticulture Ltd.'s reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Erith Horticulture Ltd.'s reasonable control:

8.8.1 Act of God, explosion, flood, tempest, fire or accident:

8.8.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition:

8.8.3 Acts, restrictions, regulation, bye-laws, prohibitions, or measures of any kind on the part of any governmental, parliamentary or local authority:

8.8.4 Import or export regulations or embargoes:

8.8.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Erith Horticulture Ltd or of a third party):

8.8.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery:

8.8.7 Power failure or breakdown in machinery.

## **9. INDEMNITY**

9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, Erith Horticulture Ltd shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim provided that:

9.1.1 Erith Horticulture Ltd is given full control of any proceedings or negotiations in connection with any such claim:

9.1.2 The Buyer shall give Erith Horticulture Ltd all reasonable assistance for the purposes of any such proceedings or negotiations:

9.1.3 Except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Erith Horticulture Ltd (which shall not be unreasonably withheld):

9.1.4 The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under and such policy or cover (which the Buyer shall use its best endeavours to do):

9.1.5 Erith Horticulture Ltd shall be entitled to the benefit of, and the Buyer shall accordingly account to Erith Horticulture Ltd for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim, and

9.1.6 Without prejudice to any duty of the Buyer at common law, Erith Horticulture Ltd shall be entitled to require the Buyer to take such steps as Erith Horticulture Ltd may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Erith Horticulture Ltd is liable to indemnify the Buyer under this clause.

## **10. INSOLVENCY OF BUYER**

10.1 This clause applies if:

10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 An encumbrance takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 The Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 Erith Horticulture Ltd reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies, then without prejudice to any other right or remedy available to Erith Horticulture Ltd, then Erith Horticulture Ltd shall be entitled to cancel the Contract or suspend any further deliveries under the contract without any liability to the Buyer.

10.2.1 The goods supplied are the property of the Company and title to the property shall not pass to the customer until such time as the goods are paid for in full. Nevertheless, the risk in the products shall pass to the customer when the goods are delivered to the customer or to any third party on the customer's behalf. Where the customer has gone into administration, insolvency or liquidation, or where a receiver has been appointed, any documentation showing evidence of the sale of goods to the customer shall be proof of the Companies Title. The Company shall have no liability for the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the company.

## **11. EXPORT TERMS**

11.1 In these conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is

defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.

11.2 Where the Goods are supplied for export from the U. K, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and Erith Horticulture Ltd) apply notwithstanding any other provision of these Conditions.

11.3 The Buyer shall be responsible for complying with any legislation governing the importation of the Goods into the country of destination and for payment of any duties thereon.

11.4 Unless otherwise agreed in writing between the Buyer and Erith Horticulture Ltd, the Goods shall be ex-works.

11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at Erith Horticulture Ltd.'s premises before shipment. Erith Horticulture Ltd shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which are made after shipment, or in respect of any damage during transit.

11.6 Payment of all amounts due to Erith Horticulture Ltd shall be made by irrevocable letter of credit opened by the Buyer in favour of and confirmed by a Bank of London acceptable to Erith Horticulture Ltd or, if Erith Horticulture Ltd has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to Erith Horticulture Ltd of a bill of exchange drawn on the Buyer payable 90 days after sight to the order of Erith Horticulture Ltd at such branch Lloyds Tsb Bank Plc. as may be specified in the bill of exchange or in such other manner as may be specified by Erith Horticulture Ltd, or if Erith Horticulture Ltd has agreed in writing to waive any previous payment requirement then alternative payment arrangement may be agreed between the Buyer and Erith Horticulture Ltd.

11.7 The Buyer undertakes not to offer the Goods for resale in any country notified by Erith Horticulture Ltd to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that person intends to resell the Goods in any such country.

## 12. GENERAL

12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.2 No waiver by Erith Horticulture Ltd of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

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

12.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to a single Umpire appointed by agreement or (in default) nominated on the application of either by the President for the time of the Nottinghamshire Law Society and the decision of the Umpire howsoever appointed shall be final and binding on the parties hereto.

12.5 The contract shall be governed by the laws of England.

# **TRADING TERMS & CONDITIONS OF SALE.**

## **CONDITIONS OF SALE**

### **1. INTERPRETATION**

1.1 In these conditions;

'BUYER' means the person who accepts a quotation from Erith Horticulture Ltd for the sale of Goods or whose order for the Goods is accepted by Erith Horticulture Ltd.

'GOODS' means the goods (including any instalment of the goods or parts for them) which Erith Horticulture Ltd is to supply in accordance with these conditions.

'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Erith Horticulture Ltd. 'CONTRACT' means the contract for the purchase and sale of the Goods.

'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

## **2. BASIS OF SALE**

2.1 Erith Horticulture Ltd shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of Erith Horticulture Ltd which is accepted by the Buyer or any written order of the Buyer which is accepted by Erith Horticulture Ltd, subject in either case to the goods being available and also to these conditions, which shall govern the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or alleged to be accepted, or any such order is made or alleged to be made, by the Buyer. .

2.2 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Erith Horticulture Ltd and these conditions replace all previous conditions used by Erith Horticulture Ltd.

2.3 Erith Horticulture Ltd employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Erith Horticulture Ltd in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice given by Erith Horticulture Ltd or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Erith Horticulture Ltd is followed or acted upon entirely at the Buyer's own risk and accordingly Erith Horticulture Ltd shall not be liable for any such advice which is not so confirmed.

2.5 Any clerical or other error or omission in any sales literature, quotation, and price list, acceptance of offer, invoice or information issued by Erith Horticulture Ltd shall be subject to correction without any liability on the part of Erith Horticulture Ltd.

2.6 Erith Horticulture Ltd reserves the right to seek credit references from the Buyer and in appropriate cases to obtain credit insurance before entering into any contract.

## **3. ORDERS AND SPECIFICATIONS**

3.1 The Buyer shall be responsible to Erith Horticulture Ltd for ensuring the accuracy of the terms of an order (including any applicable specification) submitted by the Buyer, and for giving Erith Horticulture Ltd any necessary information relating to the Goods within a sufficient time to enable Erith Horticulture Ltd to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in Erith Horticulture Ltd quotation (if accepted by the Buyer's) or the Buyer's order (if accepted by Erith Horticulture Ltd).

3.3 If the goods are to be manufactured or any process is to be applied to the Goods by Erith Horticulture Ltd in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Erith Horticulture Ltd against all loss, damages, costs and expenses awarded against or incurred by Erith Horticulture Ltd in connection with or paid or agreed to be paid by Erith Horticulture Ltd in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Erith Horticulture Ltd use of the Buyer's specification.

3.4 Erith Horticulture Ltd reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or, where the Goods are to be supplied to Erith Horticulture Ltd specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by Erith Horticulture Ltd may be cancelled by the Buyer except with the agreement in Writing of Erith Horticulture Ltd and on terms that the Buyer shall indemnify Erith Horticulture Ltd in full against all loss (including loss of profit) cost (including the cost of all labour and materials used), damages, charges and expenses incurred by Erith Horticulture Ltd as a result of cancellation.

#### **4. PRICE OF THE GOODS**

4.1 The price of the Goods shall be Erith Horticulture Ltd quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in Erith Horticulture Ltd published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the U.K., Erith Horticulture Ltd published export price list shall apply.

4.2 Erith Horticulture Ltd reserves the right, to increase the price of the Goods to reflect any increase in the cost to Erith Horticulture Ltd which is due to any factor beyond the control of Erith Horticulture Ltd (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any changes in delivery dates, quantities or specifications for the goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Erith Horticulture Ltd adequate information or instructions. It shall be the Buyer's obligation to verify the price at which the goods are purchased.

4.3 Except as otherwise stated under the terms of any advice, quotation or in any price list of Erith Horticulture Ltd, all prices are given by Erith Horticulture Ltd on a delivered basis to the Buyer's address or to an address nominated by the Buyer.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay Erith Horticulture Ltd.

#### **5. TERMS OF PAYMENT**

5.1 Subject to any special terms agreed in writing between title Buyer and Erith Horticulture Ltd, Erith Horticulture Ltd shall be entitled to invoice the Buyer for the price of the Goods on or at any time after dispatch of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Erith Horticulture Ltd shall be entitled to invoice the Buyer for the price at any time after Erith Horticulture Ltd has notified the Buyer that the Goods are ready for collection or (as the case may be) Erith Horticulture Ltd has tendered delivery of the Goods.

5.2 Subject as hereinafter provided and unless otherwise stated on Erith Horticulture Ltd invoice or unless earlier demand for payment is made by Erith Horticulture Ltd as set out below, the Buyer shall pay the price of the Goods within 28 days of the date of Erith Horticulture Ltd invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Furthermore the Buyer shall not be entitled to withhold payment of any amount due by reason of any dispute or claim nor shall the Buyer be entitled to set off against any amount payable to Erith Horticulture Ltd any amount which is due now or in the future or for which Erith Horticulture Ltd disputes liability. The time of payment of the price shall be the essence of the contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Erith Horticulture Ltd, Erith Horticulture Ltd shall be entitled to :-

5.3.1. Cancel the Contract or suspend any further deliveries to the Buyer

5.3.2. Appropriate any payment by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and Erith Horticulture Ltd) as Erith Horticulture Ltd may think fit (notwithstanding any purported appropriation by the Buyer): and

5.3.3. Charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest):

5.3.4. Cancel any settlement discount.

#### **6. DELIVERY**

6.1 Delivery of Goods shall be made by Erith Horticulture Ltd delivering the Goods to the Buyer's address or to an address nominated by the Buyer or as near as hard roads and access permit.

6.2 Any dates quoted for delivery of the Goods are approximate only and Erith Horticulture Ltd shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by Erith Horticulture Ltd in writing.



6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by Erith Horticulture Ltd to deliver anyone or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If Erith Horticulture Ltd fails to deliver the Goods for any reason other than any cause beyond Erith Horticulture Ltd.'s reasonable control or the Buyer's fault, and Erith Horticulture Ltd is accordingly liable to the Buyer, Erith Horticulture Ltd.'s liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of Erith Horticulture Ltd.'s fault) then, without prejudice to any other right or remedy available to Erith Horticulture Ltd, Erith Horticulture Ltd may: -

6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage:

Or

6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7. RISK & PROPERTY**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer,

7.1.1 in the case of Goods to be delivered at Erith Horticulture Ltd.'s premises, at the time when Erith Horticulture Ltd notifies the Buyer that the Goods are available for collection: or

7.1.2 in the case of Goods to be delivered otherwise than at Erith Horticulture Ltd.'s premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the Goods, the time when Erith Horticulture Ltd has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any provision of these Conditions, the property in the Goods shall not pass to the Buyer until Erith Horticulture Ltd has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by Erith Horticulture Ltd to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Erith Horticulture Ltd.'s fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as Erith Horticulture Ltd.'s property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to Erith Horticulture Ltd for the proceeds of sale or otherwise of the Goods, whether tangible, including insurance proceeds and shall keep all proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Erith Horticulture Ltd shall be entitled at any time to require the Buyer to deliver the Goods to Erith Horticulture Ltd and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Erith Horticulture Ltd, but if the Buyer does so all monies owing by the buyer to Erith Horticulture Ltd shall (without prejudice to any other right or remedy of Erith Horticulture Ltd) forthwith become due and payable.

## **8. WARRANTIES AND LIABILITY**

8.1 Subject to the conditions set out below Erith Horticulture Ltd warrants that the Goods manufactured and/or sold by the Company are fit for the normal purpose for which they have been designed and where applicable conform to the relevant British Standard.

8.2 The above warranty is given by Erith Horticulture Ltd subject to the following conditions:

8.2.1 Erith Horticulture Ltd shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer,

Erith Horticulture Ltd shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Erith Horticulture Ltd.'s instructions (whether oral or in writing), misuse or alteration or repair of the goods without Erith Horticulture Ltd.'s approval:

8.2.2 Erith Horticulture Ltd shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment:

8.2.3 The above warranty does not extend to parts, materials or equipment not manufactured by Erith Horticulture Ltd in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Erith Horticulture Ltd.

8.3 Subject as expressly provided in these conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), or where the provisions of the Consumer Protection Act 1987 would impose liability, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specifications or shortage shall (whether or not delivery is refused by the buyer) be notified to Erith Horticulture Ltd within 3 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure or shortage. Goods shall only be rejected with Erith Horticulture Ltd.'s written consent and in any event if delivery is not refused and the Buyer does not notify Erith Horticulture Ltd accordingly, the Buyer shall not be entitled to reject the Goods and Erith Horticulture Ltd shall have no liability for such defect or failure or shortage and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.

8.6 Where any valid claim in respect of any of the Goods which is based On any defect in the quality or condition of the Goods or their failure to meet specification or in respect of any breach of any implied warranty condition or other or any duty at common law on the part of Erith Horticulture Ltd is notified to Erith Horticulture Ltd in accordance with these conditions, Erith Horticulture Ltd shall be entitled to settle such claim by supplying to the Buyer Goods of the same specification and quality as those originally ordered free of charge or, at Erith Horticulture Ltd.'s sole discretion, refund to the Buyer the price of the Goods (or a proportion of part of the price), but Erith Horticulture Ltd shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by Erith Horticulture Ltd.'s negligence or death, personal injury or damage to property caused by defective product for which the Erith Horticulture Ltd is liable under the Consumer Protection Act 1987 and for which there is no defence under that Act, Erith Horticulture Ltd shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of Erith Horticulture Ltd, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.

8.8 Erith Horticulture Ltd shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Erith Horticulture Ltd.'s obligations in relation to the Goods, if the delay or failure was due to any cause beyond Erith Horticulture Ltd.'s reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Erith Horticulture Ltd.'s reasonable control:

8.8.1 Act of God, explosion, flood, tempest, fire or accident:

8.8.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition:

8.8.3 Acts, restrictions, regulation, bye-laws, prohibitions, or measures of any kind on the part of any governmental, parliamentary or local authority:

8.8.4 Import or export regulations or embargoes:

8.8.5 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Erith Horticulture Ltd or of a third party):

8.8.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery:

8.8.7 Power failure or breakdown in machinery.

## **9. INDEMNITY**

9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, Erith Horticulture Ltd shall indemnify the Buyer

against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim provided that:

9.1.1 Erith Horticulture Ltd is given full control of any proceedings or negotiations in connection with any such claim:

9.1.2 The Buyer shall give Erith Horticulture Ltd all reasonable assistance for the purposes of any such proceedings or negotiations:

9.1.3 Except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of Erith Horticulture Ltd (which shall not be unreasonably withheld):

9.1.4 The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under and such policy or cover (which the Buyer shall use its best endeavours to do):

9.1.5 Erith Horticulture Ltd shall be entitled to the benefit of, and the Buyer shall accordingly account to Erith Horticulture Ltd for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim, and

9.1.6 Without prejudice to any duty of the Buyer at common law, Erith Horticulture Ltd shall be entitled to require the Buyer to take such steps as Erith Horticulture Ltd may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Erith Horticulture Ltd is liable to indemnify the Buyer under this clause.

## **10. INSOLVENCY OF BUYER**

10.1 This clause applies if:

10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 An encumbrance takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 The Buyer ceases, or threatens to cease, to carry on business; or

10.1.4 Erith Horticulture Ltd reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies, then without prejudice to any other right or remedy available to Erith Horticulture Ltd, then Erith Horticulture Ltd shall be entitled to cancel the Contract or suspend any further deliveries under the contract without any liability to the Buyer.

10.2.1 The goods supplied are the property of the Company and title to the property shall not pass to the customer until such time as the goods are paid for in full. Nevertheless, the risk in the products shall pass to the customer when the goods are delivered to the customer or to any third party on the customer's behalf. Where the customer has gone into administration, insolvency or liquidation, or where a receiver has been appointed, any documentation showing evidence of the sale of goods to the customer shall be proof of the Companies Title. The Company shall have no liability for the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the company.

## **11. EXPORT TERMS**

11.1 In these conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.

11.2 Where the Goods are supplied for export from the U. K, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and Erith Horticulture Ltd) apply notwithstanding any other provision of these Conditions.

11.3 The Buyer shall be responsible for complying with any legislation governing the importation of the Goods into the country of destination and for payment of any duties thereon.

11.4 Unless otherwise agreed in writing between the Buyer and Erith Horticulture Ltd, the Goods shall be ex-works.

11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at Erith Horticulture Ltd.'s premises before shipment. Erith Horticulture Ltd shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which are made after shipment, or in respect of any damage during transit.

11.6 Payment of all amounts due to Erith Horticulture Ltd shall be made by irrevocable letter of credit opened by the Buyer in favour of and confirmed by a Bank of London acceptable to Erith Horticulture Ltd or, if Erith Horticulture Ltd has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to Erith Horticulture Ltd of a bill of exchange drawn on the Buyer payable 90 days after sight to the order of Erith Horticulture Ltd at such branch Lloyds Tsb Bank Plc. as may be specified in the bill of exchange or in such other manner as may be specified by Erith Horticulture Ltd, or if Erith Horticulture Ltd has agreed in writing to waive any previous payment requirement then alternative payment arrangement may be agreed between the Buyer and Erith Horticulture Ltd.

11.7 The Buyer undertakes not to offer the Goods for resale in any country notified by Erith Horticulture Ltd to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that person intends to resell the Goods in any such country.

## 12. GENERAL

12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.2 No waiver by Erith Horticulture Ltd of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

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

12.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to a single Umpire appointed by agreement or (in default) nominated on the application of either by the President for the time of the Nottinghamshire Law Society and the decision of the Umpire howsoever appointed shall be final and binding on the parties hereto.

12.5 The contract shall be governed by the laws of England.

Signed:

Date:

Name:

Position:

Business Name: