



General Terms and Conditions of Sale - Whetman Plants International Ltd

I Introduction

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In these conditions

"Buyer" means the person whose order for the Goods is accepted by the Seller

"Goods" means the goods including Seed and Plants (including any instalment of the Goods or any part of them) to be supplied by the seller in accordance with these conditions

"Plants" means all plants including seedling and cuttings.

"Seeds" means plant seeds

"Seller" means Whetman Plants International Ltd

2

These conditions supersede any and all prior representations, agreements, statements, and understandings whether oral or in writing.

3

These conditions are to apply in conjunction with terms of financial settlement mentioned on this website or elsewhere. In the case of any conflict these conditions shall prevail.

4

The contract shall be governed by English law and the Buyer consents to the exclusive jurisdiction of the English Courts in all matters regarding the contract except to the extent that the Seller invokes the jurisdiction of the courts of any other country

5 Complaints

No complaint shall be considered unless clear proof can be given that the Goods grown and alleged to have performed unsatisfactorily were in fact Goods supplied by the Seller and that they were grown correctly throughout and subject only to such conditions as were likely to produce a favourable crop.

6

Cancellation

6.1 (a)

The Seller shall make no charge where orders for 3cm Dianthus plugs are cancelled more than 8 weeks prior to the scheduled delivery date. The Seller shall be entitled to charge 50 per centum of the amount due for 3cm Dianthus plugs together with VAT where orders for said Goods are cancelled 6 weeks prior to the scheduled delivery date. The Buyer shall be liable to pay the full amount due for 3cm Dianthus plugs together with VAT where orders for said Goods are cancelled within less than 6 weeks of the scheduled delivery date. All cancellations must be in writing.

The Seller shall make no charge where orders for 4cm Dianthus plugs are cancelled more than 14 weeks prior to the scheduled delivery date. The Seller shall be entitled to charge 50 per centum of the amount due for 4cm Dianthus plugs together with VAT where orders for said Goods are cancelled 12 weeks prior to the scheduled delivery date. The Buyer shall be liable to pay the full amount due for 4cm Dianthus plugs together with VAT where orders for said Goods are cancelled

within less than 12 weeks of the scheduled delivery date. All cancellations must be in writing.

6.1 (b)

The Seller shall make no charge where orders for non-Dianthus plugs are cancelled more than 24 weeks prior to the scheduled delivery date. The Seller shall be entitled to charge 50 per centum of the amount due for non- Dianthus plugs together with VAT where orders for said Goods are cancelled 12 weeks prior to the scheduled delivery date. The Buyer shall be liable to pay the full amount due for non-Dianthus plugs together with VAT where orders for said Goods are cancelled within less than 6 weeks of the scheduled delivery date. All cancellations must be in writing.

The Seller shall make no charge where orders for non-Dianthus pots are cancelled more than 36 weeks prior to the scheduled delivery date. The Seller shall be entitled to charge 50 per centum of the amount due for non- Dianthus pots together with VAT where orders for said Goods are cancelled 24 weeks prior to the scheduled delivery date. The Buyer shall be liable to pay the full amount due for non-Dianthus pots together with VAT where orders for said Goods are cancelled within less than 12 weeks of the scheduled delivery date. All cancellations must be in writing.

6.1 (c)

The Seller shall make no charge where orders for **Tissue Culture** are cancelled more than 16 weeks prior to the scheduled delivery date (20 weeks for Cordyline). The Seller shall be entitled to charge 50 per centum of the amount due for Tissue Culture together with VAT where orders for said Goods are cancelled 12 -15 weeks prior to the scheduled delivery date (16-19 weeks for Cordyline). The Buyer shall be liable to pay the full amount due for Tissue Culture together with VAT where orders for said Goods are cancelled within less than 12 weeks (less than 16 weeks for Cordyline) of the scheduled delivery date. All cancellations must be in writing.

7

Claims Notification

7.1

Any claim for non-delivery of goods shall be notified in writing by the Buyer to the Seller within 48 hours of the date of the relevant invoice.

7.2

Any claim that the Goods have been delivered damaged or are not of the correct quantity or quality or do not comply with their description shall be notified by the Buyer to the Seller by telephone or email within 48 hours of their delivery with photos.

8

Force Majeure

The Seller shall not be liable for any failure in the performance of any of its obligations caused by factors outside its control.

9 Extent of Liability

9.1

The Seller shall have no responsibility to the Buyer for any loss or damage of any nature arising from any breach of any express or implied warranty or conditions of any negligence, breach of statutory or other duty on the part of the Seller or arising in any other way out of or in connection with the performance of or failure to perform any contract except in accordance with this condition.

9.2

The Seller shall at its option replace with similar Goods or repair any defective Goods, allow the Buyer credit for their invoice value or to the extent that the Goods are not of the Seller's manufacture or growth, assign to the Buyer (so far as the Seller is able to do) any warranties given by the manufacturer or breeder of the Goods to the Seller.

9.3

Where the Seller 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 off-set or other claims shall be made by the Buyer against or in respect of such other or other parts of the Goods.

9.4

In no circumstances shall the liability of the Seller to the Buyer exceed the invoice value of the Goods.

10 Delivery

The Seller may at its discretion deliver the Goods by instalments in any sequence and each instalment shall be deemed to be the subject of a separate contract and no default or failure by the Seller in respect of any more instalments shall vitiate the contract in respect of Goods previously delivered or undelivered Goods.

11 Non-Payment

11.1

The Seller may withhold deliveries until outstanding payments under any contract with him, by the Buyer, have been received and may sell or otherwise dispose of all the Goods the subject of any such contract whether appropriated to it or not in respect of any such payments.

12 Title and Risk

12.1

Unless otherwise agreed in writing between the Seller and the Buyer risk in the Goods shall pass on delivery.

12.2

For the purpose of Section 12 of the Sale of Goods Act 1979 the Seller shall transfer any such title or rights in respect of the Goods as the Seller has and if the Goods are purchased from a third party shall transfer only such title or rights as the party had and has transferred to the Seller.

12.3

Notwithstanding the earlier passing of risk (which shall unless otherwise agreed be on delivery) title in the Goods shall remain with the Seller and shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due in respect of:-

12.3.1

the Goods; and

12.3.2

all other sums which are or which become due to the Seller from the Buyer on any account.

12.4

The Seller shall be entitled to recover the amounts due in accordance with clause 11.1 notwithstanding that property in any of the Goods has not passed from the Seller.

12.5

Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so they can at all times be identified as the property of the Seller. The Seller shall be entitled at any time before title passes to repossess (without being liable for any damage caused by so doing) and use or sell all or any of due Goods and so terminate (without any liability to the Buyer) the Buyer's right to sell or otherwise deal in them and for that purpose or determining what if any Goods are held by the Buyer and inspecting them to enter any premises of the Buyer.

12.6

Should the Goods become constituents or be converted into other products before title passes to the Buyer the Seller shall have ownership and title in such other products as if they were solely and simply the Goods and all the Seller's rights hereunder shall extend to such other products.

12.7

Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Seller and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's money. The Seller shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer. Nothing in these conditions shall constitute a bill of sale or other security so as to require registration.

12.8

The Buyer (subject as hereinafter provided) shall be responsible for keeping confidential all information (hereinafter referred to as "Know How") supplied by the Seller of a secret and confidential nature provided that the Seller shall first have given notice in writing to the Buyer of the secret or confidential nature of such information before so supplying it.

12.9

The obligation under condition 12.8 shall cease 6 months after the publication by the Seller or any third party of information comprising or being part of the Know How to the extent of such publication (or of agreement by the Seller) that such information or part thereof is in the public domain.

13

Availability

Orders are accepted subject to Goods being available from the Seller's own stock or a 3rd party at the time delivery is due. The Seller may substitute what in the Seller's opinion is the nearest equivalent for any variety if not available unless the Buyer specifically prohibits this in writing.

14

Warranties.

Every effort is made to ensure that the Seller's stock is of the highest quality, true to catalogue name and free from pest and disease but goods are sold without warranty, express or implied, as to description, quality and sample, productivity or freedom from pest and disease.

15

Prices

15.1

All Goods are sold at prices current at the time of sale.

15.2

The price of any Plant variety, which becomes the subject of a grant of Plant Breeders' Rights under the Plants Variety and Seeds Act 1964 (as amended) or other similar legislation or directives will be adjusted to include the cost of any royalty payable to the owner of the rights. If, in the case of a variety, which is already the subject of Plant Breeder's Rights, there is any change in the rate of royalty, the price will be adjusted accordingly.

15.3

The Seller reserves the right to charge interest at the rate of 2% per month on overdue accounts.

16

Protected Varieties

16.1

The Buyer shall not in any way effect multiplication or propagation of plant varieties obtained from the Seller which are protected by Plant Breeders' Rights in accordance with the Plant Variety and Seeds Act 1964 (as amended) or other similar legislation or Directives or by virtue of a perpetual clause in a contract. Consequently, the Buyer may not dispose of Plants or Seeds or parts thereof in violation of such Rights.

16.2

The Buyer shall clearly make known on disposal and in advertisements that commercial propagation and duplication is only allowed with the Breeder's consent. The Plant and/or Seed variety, supplied may only be used by the Buyer for cultivation of end products on the premises of the Buyer or plants under his control.

16.3

The Buyer shall only resell the end product deriving from cultivation of the Plant and/or Seed varieties bought and received by him from the Seller under the appropriate variety name and brand name.

16.4

If the Buyer comes across a mutant of the protected variety he shall communicate this fact immediately by registered mail to the holder of the Plant Breeders' Rights.

16.5

Within 2 months of receiving the written demand of the holder of the Plant Breeders' Rights the Buyer shall submit test material obtained from the mutant to the holder of the Plant Breeders' Rights.

16.6

The Buyer hereby acknowledges that the discoverer of a mutant requires the permission of the breeder(s) of the source variety to commercially produce the mutant variety.

16.7

The Buyer acknowledges that the discoverer of a mutant requires the permission of the holder of the Plant Breeders' Rights to the variety which the mutant is derived to perform the actions mentioned below on all materials obtained from first variety including materials already harvested such as flowers, plants and parts of plants;

16.7.1 to propagate or multiply (breed) them;

16.7.2 to bring them into any condition for purposes of breeding;

16.7.3 to offer them for sale

16.7.4 to sell or market them in any way

16.7.5 to export them;

16.7.6 to import them;

16.7.7 to store them for any of the purposes mentioned above under (16.7.1) through to (16.7.6).

16.8

The Buyer shall comply in all respects with the requirements of the Plant Variety and Seeds Act 1964 (as amended) insofar as they relate to the protection of the Sellers Plants Breeders' Rights in Seeds and Plants sold to the Buyer and shall indemnify the Seller against any loss, damages, costs or expenses incurred by the Seller arising from any non-compliance with such requirements.

16.9

The Buyer shall forthwith notify the Seller of any infringement of such rights mentioned in condition 16.8 which shall come to the attention of the Buyer and at the request and expense of the Seller shall render the Seller all reasonable assistance for the purpose of proceedings or negotiations with such infringer.

17

Control

17.1

The Seller shall have the right of access to the Buyer's premises or the plots under his control where the Plant varieties supplied by the Seller are located in order to inspect or assess the same to ensure compliance with the Plant Variety and Seeds Act 1964 (as amended). The Seller shall inform the Buyer of his visits in reasonable time.

17.2

The Buyer agrees to offer reasonable and necessary assistance and to give all relevant information for the performance by the Seller of inspection in accordance with Clause 17.1. The inspection or assessment shall not be more exhaustive than is necessary to verify observance of the terms of sale.

17.3

The Seller or a representative authorised by him shall not, as part of the inspection or assessment, demand information of a commercial nature, and the Seller guarantees the confidentiality of any information that may come to his knowledge in connection with such visits, inspections or assessments or any information received otherwise.

17.4

Violations of these terms and conditions in respect of protected varieties and breeders rights as

defined in clause 16 will result in an immediate penalty of £1.00 per illegally propagated cutting. This penalty does not affect the legal rights of the Seller to claim real damages from the Buyer or other transgressor.

18.1

This Agreement will be governed and construed in accordance with the laws of the United Kingdom.

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