

# PALMSTEAD NURSERIES LIMITED

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

In these Conditions the following applies :-

- a) "The Company" means Palmstead Nurseries Limited trading as Palmstead Nurseries and Palmstead Plants.
- b) "The Customer" means the person, company or corporation who has placed an order with the Company.
- c) "The Goods" means the goods sold under these Conditions of Sale.
- d) "The Service" means the service offered or supplied.

### 2. APPLICATION OF CONDITIONS

- a) The Conditions shall govern any sale or service supplied by the Company to the exclusion of any other Terms and Conditions as have been expressly approved of in writing by a Director of the Company.
- b) Any quotation given by the Company shall be construed as an invitation to treat and orders placed thereon are subject to acceptance by the Company.
- c) Unless otherwise expressly stated therein a quotation shall not remain open for more than 30 days from the date of quotation. A quotation may be withdrawn at any time.

### 3. ORDERS AND PRICES

- a) The Company will be under no liability for any order received unless it is accompanied by an order reference and until the Company have accepted it. Once the Company have accepted an order the Customer may only cancel or vary it with the Company's written consent. If the Company consent, it will not in any way prejudice the Company's right to recover from the Customer full compensation for any resulting loss or expense.
- b) Unless otherwise agreed between the Company and the Customer in writing the prices for Goods and or Service will be that ruling at the date of dispatch. Value Added Tax or any other relevant tax will be added to the price.
- c) No discount will be given on Goods delivered to Customers by the Company.
- d) Goods may be reserved by Customers on payment to the Company of a 20% non refundable deposit.
- e) The Company may cancel or vary any quotation or accepted order at any time until the particular order has been delivered and if the Company have required references or guarantees, until the Company have notified the Customer in writing that the Customer's references or the credentials of the Customer's guarantor are acceptable. In any event no warranty is given that any Goods are available for immediate delivery.

### 4. DELIVERY DATES

- a) Any dates given for shipment or delivery are approximate.
- b) Whilst every effort will be made to adhere to the agreed dates, such dates are not guaranteed and the Company accepts no liability for delay in shipment or delivery from any cause whatsoever.
- c) The Company may at its discretion deliver the Goods in instalments.
- d) The Company shall have a lien on all Goods appropriated to this contract, the title to which have not passed to the Customer for all sums due from the Customer to the Company, whether arising under the contract of sale or not.
- e) Where the Customer, having been notified that the Goods are ready for dispatch or, as the case may be, for collection, for any reason refuses or is unable to accept delivery or to make collection, the Company shall be entitled to invoice the Customer for the agreed price of the Goods which the Customer shall pay as though the Goods had been dispatched or collected on the date of notification. The Company shall have the right to charge the Customer for storage and insurance of, and all other expenses incurred by it in respect of, the Goods and, notwithstanding the "Passing of title and risk" clause (outlined in these Terms and Conditions), risk in the Goods shall be treated as having passed to the Customer from the date of the Company's notification.

### 5. WARRANTY AND LIABILITY

- a) The Company gives no warranty as to the growth or productiveness of the Company's product.
- b) If any of the Goods do not comply with the Company's usual standards and specifications and the Customer notifies the Company within 48 hours of receiving the Goods, the Company will, at its reasonable option replace the same, rectify the breach, refund the appropriate part of the price or take back all or part of the Goods. Any Goods replaced by the Company shall become the property of the Company and shall be held by the Customer to the order of the Company.
- c) The Company shall not be liable for any of the following :-

- i) Consequential loss.
- ii) Any excess in total claims over the contract price.
- iii) Statements, recommendations, advice, or assistance which it was not contractually bound to provide.
- iv) Loss caused by delay.
- v) Any loss which the Company is precluded from recovering from a carrier by reason of the Customer's failure to give the notice necessary for such recovery.
- vi) Any alleged defect in the Goods which the Customer or any person acting on its behalf shall have rectified or attempted to rectify.
- vii) Any failure or delay in the performance of its obligations caused by any circumstances beyond its reasonable control.
- viii) Damage caused by misuse or non-compliance with instructions set out in the Company's instructions (if any).
- d) The Company does not exclude or limit liability for death or personal injury arising from negligence.
- e) The Company will deliver with the Goods a delivery note and unless the contents of the note are disputed by the Customer within 24 hours after the date recorded upon it the particulars shown upon it shall be conclusive against the Customer.
- f) Any description of goods appearing in the Company's advertising or in a catalogue or literature produced by the Company is given by way of identification only and the use of such a description shall not constitute a sale by description. In so far as information contained in such advertising, catalogue and literature has been compiled from information supplied to the Company by any other party the Company accepts no responsibility for its accuracy.

### 6. FORCE MAJEURE

The Company shall be excused non-delivery or delay in delivery directly or indirectly caused by or resulting from, or made fundamentally more onerous by, events or circumstances beyond the Company's reasonable control (including but without prejudice to the generality of the foregoing, suppliers' delays and trade disputes, whether of the Company's employees or otherwise). In the event of any deliveries being so suspended, or delayed, the period of contact shall be correspondingly extended, or if deliveries are suspended for one month or more either party may, by notice in writing to the other, cancel the contact whereupon the Company shall either issue a credit note or invoice as appropriate, in any amount equal to an equitable portion of the total contract price.

### 7. PAYMENT

- a) All accounts are strictly net and must be paid by a method approved by the Company no later than 30 days after the date of invoice. However, the Company reserve the right at the Company's sole discretion to refuse credit to the Customer.
- b) The Company will be entitled :-
  - i) Under The Late Payment of Commercial Debts Interest (Act) 1998 to charge interest at the rate of 8% above the late payment reference rate per month on any overdue account which shall include any amount that the Company has had to spend on the Customer's behalf.
  - ii) To recover from the Customer all legal and Debt collection Agency costs which may have been incurred in recovering monies due on overdue accounts.

### 8. EXPORT DELIVERIES

In respect of all contracts for the sale of Goods outside the United Kingdom the Customer will provide any necessary export licences or exchange control authorisation within a reasonable time prior to the date for shipment.

### 9. RETENTION

- a) Notwithstanding that the Customer obtains possession of the Goods, both the legal and the equitable title thereto will remain in the Company until the Company has received payment from the Customer of the contract price in full with all VAT thereon and all other monies that may be or become due from the Customer to the Company in relation thereto. Until such time, the Customer shall hold the Goods in trust for the Company and the Company shall be entitled to require the Customer to deliver the Goods or any of them to it on demand and to enter upon the Customer's premises for the purpose of collecting them (to include, without prejudice to the generality of the foregoing, the dismantling of any item into which the Goods have been incorporated) and the Customer shall be responsible for all the Company's costs and expenses in conjunction with so doing. The Customer may, however, subject to clause (b) below, sell the Goods by way of Bona Fide sale in the ordinary course of its business on its standard terms and conditions and by way of sale as principal (not

as agent). That sale will constitute a sale by the Customer of the Company's property and accordingly the Customer will account to the Company for the proceeds of sale up to the amount outstanding in respect of the Goods and pending such accounting will hold the same in trust for the Company.

- b) The Customer's right given or employed from sub-clause (i) of this clause to retain possession of and deal with the Goods shall automatically and without notice be determined forthwith in any of the following circumstances :-
  - i) If the Customer continues in breach of any of the terms hereof following the service upon the Customer of a notice in writing sent by or on behalf of the Company complaining of the breach.
  - ii) If the Customer (being an individual) is adjudged bankrupt or suffers any execution to be levied upon any of his assets.
  - iii) If the Customer (being a company) has a receiver appointed of all or part of its property or passes any resolution for creditors winding up or is unable to pay its debts within the meaning of the Companies Act for the time being in force or is in arrears with any sum due from it hereunder.
- c) On the occurrence of any of the events specified in clause (b) above, the Company may (without prejudice to any other rights or remedies available to it) without notice determine all or any part of this contract and may suspend or cancel deliveries hereunder and shall have a general lien on all the Customer's property then in the possession of the Company (whether as consignee or otherwise) in respect of any sums which may be owing by the Customer to the Company on any account whatsoever, and on expiration of fourteen days' notice the Company shall be entitled to dispose of the same and apply the proceeds of the sale towards satisfaction of all monies owing to the Company.

### 10. RETURN OF PACKAGES

- a) The Company will pack Goods in accordance with normal practice.
- b) A charge may be made for all pallets, drums, packing cases or returnable packages. Full credit for the amount charged will be given if they are returned to the point of dispatch, carriage paid and in good and undamaged condition within 56 days of the date of the invoice.

### 11. ASSIGNABILITY

- a) The Customer may not assign or part with its interest in this contract.
- b) The Company may delegate or sub-contract its duties under this contract but shall, despite such delegation or sub-contract, remain liable to the Customer for the full performance thereof.

### 12. INTERPRETATION

These conditions and the contract of which they form a part shall be governed by and construed in accordance with English law and the Customer irrevocably submits to the jurisdiction of the English Courts.