

Hargreaves Plants Ltd

These are the sole Terms and Conditions of sale, which apply to the sale of Goods supplied by Hargreaves Plants Ltd. **PLEASE READ CAREFULLY. These terms & conditions supersede any previous terms and conditions presented in prior order acknowledgments, delivery notes, and invoices from Hargreaves Plants Ltd.**

1. **INTERPRETATION**

In these Conditions: -
"Conditions" means the standard terms and conditions of sale set out in this document and (as amended from time to time) include any special terms and conditions agreed in writing between the Company and the Customer.
"Contract" means the Contract for the purchase by the Customer and sale by the Company of the Goods.
"Credit Customer" means a Customer who has a credit account with the Company. Terms for opening an account subject to status, are available on request. The Company reserves the right to vary or cancel credit facilities at any time without notice.
"Customer" means the person who accepts a quotation from the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.
"Company" means Hargreaves Plants Ltd, Church Farm, Station Road, Hillington, Kings Lynn, Norfolk, PE31 6DH, UK.
"Goods" means the goods that the Company is to supply in accordance with these conditions.
"Plants/crowns/seeds/roots/buds/cultures" means the plants/crowns/seeds/roots/buds/cultures that the Company is to supply as Goods in accordance with these conditions where applicable.
- 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.
2. **BASIS OF SALE**
 - 2.1 The Company shall sell and the Customer shall purchase the Goods subject to these Conditions, which shall govern the Contract to the exclusion of any other terms & conditions proposed by the customer.
 - 2.2 Advice and information shall always be given according to the best of its knowledge and ability without any liability to the Company whatsoever.
 - 2.3 Any typographical clerical or other error or omission in any sales literature, quotation, acceptance of offer invoice or other document or information issued by the Company shall be subject to correction without liability on the part of the Company.
3. **QUOTATIONS AND ORDERS**
 - 3.1 Unless otherwise expressly stated therein a quotation shall not remain open for more than 28 days from the date of the quotation. A quotation may be unconditionally withdrawn at any time.
 - 3.2 The Company accepts orders, subject to the following conditions: -
 - 3.2.1 The Goods being unsold at the date of receipt of the Customer's written confirmation of purchase.
 - 3.2.2 Certification of the Plants/crowns/seeds/roots/buds/cultures in the field to DEFRA Plant Health Standards and inspected and certified under PHPS certification schemes or a Worldwide equivalent plant/crown/seeds/roots/buds/cultures health scheme, where relevant and possible.
 - 3.2.3 Receipt of a deposit for the Goods where applicable.
 - 3.2.4 Availability of Goods means that all orders taken for goods that are still growing in the nursery/field are accepted based on estimations with no guarantee of supply. This applies to product grown by Hargreaves Plants Ltd (The Company) or any contracted supplier.
 - 3.3 If the Company is unable to fulfil in full or part an order because of any reason set out in Clause 3.2 above and if no substitution is agreed under Clause 4, the Company may cancel the order and shall refund any monies paid by the Customer to the Company. The Company shall have no further liability to the Customer.
 - 3.4 No order, which has been accepted by the Company, may be amended by the Customer except with the agreement in writing of the Company.
 - 3.5 Any order placed by the Customer shall be deemed a firm Contract of sale when the Company issues a Confirmation of Sale. This applies whether the Customer submits or does not submit a Customer purchase note, or signs the confirmation of sale or not.
 - 3.6 Any purchasing terms within the customer's purchase note are automatically over ruled as stated in clause 2.1 of these Conditions.
4. **SUBSTITUTION**

If a variety of Goods is not available, no substitution will be made unless the Company and the Customer agree to it.
5. **PRICES**
 - 5.1 The price of the Goods shall be as listed on the Company's confirmation of order. No variation can take place without prior agreement in writing by the Company.
 - 5.2 Except as otherwise stated under terms of any quotation or in any price of the Company and unless otherwise agreed in writing between the Customer and the Company, all prices are given by the Company on an ex-store basis. Where the Company agrees to deliver the Goods otherwise than at the Company's premises the Customer shall be liable to pay the Company's charges for transport packaging and insurance. Where the company undertakes the service of Delivery there is no liability for delays or deterioration in condition or off loading of wrong variety. The Customer is liable to pay for any necessary certification and documentation or inspection charges. This includes but is not limited to root washing for export. The Company reserves the right to charge additionally for any royalties levied by breeders against the sale of plants.
 - 5.3 The price of plants, seeds or crowns is currently quoted exclusive of Value Added Tax. All other Goods shall be charged at the applicable rate of VAT (or such other equivalent or similar tax or charge) as at the date of invoice or as appropriate. The company reserves the right to invoice certification costs separately.
 - 5.4 August and September strawberry plants will carry an early lifting charge.
 - 5.5 Where goods are imported by the company to sell to the customer, the customer is liable in full for any import/export taxes which apply.
6. **OWNERSHIP AND RISK**
 - 6.1 Until paid for in full, all Goods supplied by the Company, remain the Company's property. The Customer undertakes to look after the Goods pending payment and to keep the Company informed of their whereabouts and to make them available for collection in good re-saleable condition in the event of non-payment.
 - 6.2 Risk passes to the Customer on collection or delivery of the Goods.
7. **CANCELLATIONS**
 - 7.1 A sale to a Customer is deemed to have taken place by the Company and is not able to be modified or cancelled unless agreed by the Company in writing.
 - 7.2 A sale to a Customer is confirmed but the Company as an order by a fax, email or in writing.
 - 7.3 Only by agreement between the Customer and the Company exchanged in writing can a cancellation of Goods take place.
 - 7.4 With or without a written notice of Confirmation of Purchase by the Customer to the Company an Acknowledgement of Order by the Company to the Customer shall be binding on the Customer to take and/or pay for the Goods in full.
8. **DELIVERY**
 - 8.1 Delivery of the Goods shall take place when the Customer collects the Goods from the Company's premises or if the Company agrees some other place or method of delivery with the Customer by the Company delivering the Goods to that place.
 - 8.2 Any dates quoted for collection or deliveries of Goods are approximate only and the Company shall not be liable for the consequences of any delay in the delivery of the Goods howsoever caused. Time of delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
 - 8.3 If the Customer fails to take delivery of the Goods in whole or part, or fails to give the Company adequate delivery instructions at the time stated for delivery, otherwise than by reason of any cause beyond the Customer's reasonable control or reason of the Company's fault, then without prejudice to any other right or remedy available to the Company, the Company may:
 - 8.3.1 Store the Goods until actual delivery and charge the Customer for the reasonable costs including insurance and storage; or
 - 8.3.2 Sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Customer for the excess over the price under the Contract or charge the Customer for any short-fall below the price under the Contract.
 - 8.3.3 Charge the Customer in full for the Goods and all costs incurred if no alternative sale of the Goods can be achieved.
 - 8.4 The Company reserves the right to increase the quoted haulage price should any surcharges from the transporters subsequently be applied. The same is true for any changes in monetary exchange rates.
 - 8.4.1 Costs of transport and packaging arranged and agreed between the Company and the Customer will be charged and invoiced where possible with the Goods.
 - 8.5 The Company may split delivery of Goods ordered. In such cases the Company shall be entitled to treat part delivery as a separate Contract and invoice separately.
 - 8.6 If the Customer is of the opinion that there is a shortfall in the agreed quantity at the time of delivery, then the Company must be advised within 72 hours and with every consignment.
 - 8.7 Should any quantity within a delivery be adjudged by the Customer not to meet specification then the Company must be advised within 72 hours and the goods claimed to be defective held in good and re-usable condition. Any delay in advising or disposal of plants negates any right to claim against the Company.
9. **FORCE MAJEURE**

Should the fulfillment of any contract or order be prevented or delayed by Act of God, action by any Government, blockade, revolution, prohibition of export or import, riot, war, civil commotion, strikes, lockouts, force majeure, failure of crops, breakdown of machinery, power failure, fuel shortage, loss and/or detention at sea/air or any other contingency beyond the Company's control, the Company will not be responsible for any loss and/or damage occasioned thereby. Should any of the Goods be rendered unfit for delivery by reason of any of the above acts the Contract so far as it relates to those Goods shall be deemed to be cancelled.
10. **PAYMENT**
 - 10.1 Credit Customers shall pay the price of the Goods within 14 days of the date of the Company's invoice. Time for payment of the invoice shall be of the essence of the Contract. All payments are due without deduction or set-off and may not be settled in instalments.
 - 10.2 If the Customer fails to make payment in full on the due date, then without prejudice to any other remedy available to the Company, the Company shall be entitled to charge the Customer interest. Compound interest will be charged on overdue accounts at a rate of 2% per month above the current base rate calculated on the outstanding balance. A part of a month will be treated as a full month for the purpose of calculating interest.
 - 10.3 The Company reserves the right to take a deposit with order for any orders over the value of £1,000.00
 - 10.4 A deposit of 25% of the value of the plants ordered is due and payable (on discretion of the Company) within 14 days of the deposit invoice on all Waiting Bed Plants, Potted Everbearer Plants, Tray Plants and Raspberries. Blueberry, Blackberry and Asparagus plants may be added at the Company's discretion.
 - 10.5 The Company reserves the right to take payment in full as cleared funds prior to delivery/collection for plants and delivery charges with any first time customers.
 - 10.6 Deposits are non-refundable or at the Company's discretion if delivery declined.
 - 10.7 The Company reserves the right to set-off any unpaid invoice or invoices against sums owing by the Company to the Customer.
 - 10.8 The Company reserves the right to request payment in full prior to despatch where it deems necessary.
11. **NON-PAYMENT**
 - 11.1 The Company reserves the right to withhold deliveries until all outstanding payments under any Contract with the Company by the Customer have been received and reserve a lien upon - and the right to sell or otherwise dispose of - all Goods the subject of this Contract whether appropriated to it or not in respect of any such payments.
 - 11.2 The Company reserves the rights to recover in full, from the Customer, any monies which will become due as a result of non-delivery because of non-payment.

12. **WARRANTIES AND LIABILITIES**
- 12.1 Subject to the conditions set out below and unless stated to the contrary, the Company warrants the plants/crowns/seeds/roots/buds/cultures have been grown and produced to DEFRA Plant Health Standards and inspected and certified under PHPS certification schemes, where applicable and possible on UK grown plants unless specifically agreed. The plants/crowns/seeds/roots/buds/cultures are believed to be healthy at the time of delivery and free from visible signs of pest and disease when inspected. Details of inspection records are available on request.
 - 12.2 The Company gives the above warranty subject to the following conditions: -
 - 12.2.1 The Company shall not have any liability whatsoever to the Customer under, or in any way related to, the sale and purchase of the Goods for any further loss or damage of any nature whatsoever, including, without limitation, consequential loss (including loss of profit or use or third party claims). The reason for this limitation of liability is that while the Company has taken all reasonable care to keep the Goods true to type and disease and pest free, plants are living organisms, field-grown or tunnel/glass-grown, and therefore open to the environment, so the Company cannot guarantee that they are totally true-to-type and disease and pest-free. The price of the Goods reflects the limit to the Company's obligations; if a customer wants a supply of plants with a guarantee of these matters, the Company will endeavour to offer plants at a price which allows it to do so.
 - 12.2.2 The Company will take no liability on the health or subsequent performance of plant/crowns/seeds/roots/buds/cultures material over and above plant passport regulations on new varieties that are within 3 years of their date of launch by the licence holder in the UK.
 - 12.2.3 The Company shall accept no liability nor consequential losses for the non-supply of plants/crowns/seeds/roots/buds/cultures where plants/crowns/seeds/roots/buds/cultures have not been supplied due to plant/crown/seed/root/bud/culture health problems or plant/crown/seed/root/bud/culture failure during propagation or damage during storage or transport or otherwise outside the Company's control.
 - 12.2.4 The Company shall be under no liability in respect of any problem arising after delivery from wilful damage, negligence or failure to follow the Company's instructions, whether oral or in writing.
 - 12.2.5 Where a laboratory test for any pest, disease or virus has been carried out and found negative by the Company on plant material during the growing season prior to delivery, this result cannot be challenged by any subsequent customer instructed tests.
 - 12.2.6 The Company shall be under no liability under the above warranty, or any other warranty, condition or guarantee if the total price of the Goods has not been paid by the due date for payment.
 - 12.2.7 The Company shall be under no liability under the above warranty or any other warranty condition or guarantee if any inappropriate fertiliser or chemical or cultural treatment is applied to the Plants or to the soil in which the Plants are planted or in store.
 - 12.2.8 The Company does not guarantee the further growth and/or flowering/fruiting of the Plants in any respect whatsoever.
 - 12.2.9 The Company accepts no liability for the performance of cold store strawberry plants delivered/collected after 30th June of any year.
 - 12.2.10 In accordance with these Terms and Conditions in general, no claim against the Company in respect of plant quality will be considered unless submitted in writing, and supported by written professional proof and evidence.
 - 12.3 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, all warranties, conditions or other terms implied by the statute or common law are excluded to the fullest extent permitted by law.
 - 12.4 Where the Goods are sold under a consumer transaction, as defined by the Consumer Transactions (Restrictions on Statements) Order 1978, the statutory rights of the Customer are not affected by these conditions.
 - 12.5 Where a valid claim in respect of any Goods which is based on any proven defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with the above condition, the Company shall be entitled to replace all or part of the Goods. The Company shall have no further liability to the Customer. The Company does not hold Product Liability Insurance. The Customer should hold Insurance for Consequential Loss. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation, any implied warranty condition or other term, any duty at common law or under the express terms of the Contract for any consequential loss or damage. The Company shall not be liable for loss of profit or otherwise, costs expenses or other claims for consequential compensation whatsoever, and whether caused by the negligence of the Company, its employees or agents otherwise, which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, except as expressly provided in these conditions.
 - 12.7 The warranties given in these conditions are specific to the Customer and are not capable of being assigned.
 - 12.8 The Company will deliver with the Goods or send by fax/e-mail when not possible a delivery note and unless the Customer disputes the contents within 24 hours after the date recorded upon it the particulars shown upon it shall be conclusive as against the Customer.
 - 12.9 Any description of the Goods appearing in the Company's advertising or in a catalogue or literature produced by the Company is given by the way of identification only and the use of a description shall not constitute a sale by description, so far as information in such advertising catalogue and literature has been compiled from information supplied to the Company and the Company accepts no responsibility for its accuracy.
 - 12.10 Under no circumstances will the Company consider valid any complaints relating to plants in respect of quality, pests, diseases or any other alleged disorders if such complaints are not fully supported with substantive evidence in writing. In any event no complaints about plants will be considered if any part of the Company's Terms and Conditions are breached by the Customer.
 - 12.11 The Company bears no liability whatsoever for pesticide residues found in plant material supplied or in any subsequent fruit or spears produced.
 - 12.12 Any export or importation found in any plant stock supplied by Hargreaves Plants remains wholly the property of the Company.
 - 12.13 Where the Company supplies to the customer goods from third parties including specifically imported goods no warranties are provided above those supplied to the Company by its supplier Imported goods will be passed on supported solely by information supplied by the supplier, any official certification or health checks from the relevant authorities and, additionally official import checks by UK authorities. Should such plants later show any latent defects or fail to perform in any way the Company has no liability other than that which it can negotiate with its supplier on behalf of the Customer.
13. **USE OF PLANTS AND LICENCES/CONSENTS**
 - 13.1 This/These variety (s) are protected by a EU or National Plant Breeders' Right (PBR). These plants are for fruit production only. Propagation without the appropriate license will breach the EU or National PBR. Legal action will be taken where illegal production of this variety is found.
 - 13.2 The Company supplies Plants for the purpose of fruit or sppear production. Any customer wishing to obtain parent stock for further propagation will need to obtain written consent from the holder of the Plant Variety Rights or its agent. Contacts for the licence holder or agent of any variety can be supplied on request.
 - 13.3 Should any Customer wish to use a variety for further resale to any commercial grower or be used to sell on to the garden trade then prior written permission should be sought from the Company and/or the head licence holder.
 - 13.4 If any licence consent or authority is required for the purchase carriage or use of the Plants the Customer shall obtain the same at own expense and shall on request provide evidence of the same to the Company.
 - 13.5 If any claim shall be made against the Company in respect of the Customer's failure to obtain any necessary licence, consent or authority as set out in Clause 13.2 above, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with any such claim.
14. **EXPORTS**
 - 14.1 Where the Goods are supplied for export from the United Kingdom, Goods are sold as "Delivered at Frontier" (DAF). DAF means that the Company's obligations are fulfilled when the goods have arrived at the frontier but before the customs border of the country named in the sales contract. The Company bears the cost of the goods up to this point and shall invoice the Customer accordingly, but the Customer is liable for the haulage and insurance up to this point and must arrange and pay for the goods to clear customs.
 - 14.2 All import documents are the responsibility of the Customer.
 - 14.3 Where applicable, phytosanitary certificates or plant health passports will be provided.
 - 14.4 Any orders placed by Customers outside of the UK are liable to payment in full as cleared funds in the Company's bank account before delivery/collection.
15. **FLUCTUATIONS IN THE £ STERLING**

If the Goods sold as agreed in writing are of foreign origin the Company reserves the right to adjust the price payable by the Customer so as to reflect any alteration in the value of the £ sterling in terms of currency in the country of origin of the goods between the date of written confirmation of sale and the date of invoice.
16. **ARBITRATION**
 - 16.1 Any dispute under this contract shall be referred to arbitration as follows:
 - 16.1.1 In the case of a dispute between a member of the National Farmers' Union for England and Wales or a member of the National Farmers' Union of Scotland and a member of the AIC (Agricultural Industries Confederation, previously UKASTA), the dispute shall be referred to arbitration under the rules for the conduct of arbitration jointly agreed between those three organisations; and the making of this Contract shall be deemed to be respectively an offer and acceptance in writing to settle any dispute arising out of this Contract by arbitration as required by those rules.
 - 16.1.2 If not otherwise agreed, in every other case the dispute shall be referred to arbitration in accordance with the arbitration rules of the AIC, Confederation House, East of England Showground, Peterborough, PE2 6XE and all parties shall in making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.
 - 16.2 Subject to the above, the Company and the Customer hereby submit to the exclusive jurisdiction of the English Courts and the Contract and the Conditions shall be governed by and interpreted solely in accordance with English Law and in this English version.
17. **INSOLVENCY**
 - 17.1 If either party to the Contract:
 - (a) Has a Receiver or Liquidator appointed to any of his property or business undertaking; or
 - (b) Announces that he is ceasing to trade (other than for declared legitimate reasons such as retirement, whilst continuing to honour all existing contracts); or
 - (c) Fails to make a payment as due, suspends payment and/or notifies any of his creditors that he is unable to meet debts or that he is about to suspend payment of his debts; or
 - (d) Convenes, calls or holds a meeting of creditors; or
 - (e) Being an individual trader commits an act of bankruptcy and/or is adjudicated bankrupt or makes any composition or scheme of arrangement with his creditors; or
 - (f) Being a body corporate convenes, calls or holds a meeting for the purpose of going into liquidation (other than for the purpose of reconstruction or amalgamation) by the making of an order or the passing of a resolution for winding-up; or
 - (g) The insolvency of either party to the contract occurs by the death of the partnership or to any partner therein; then - notwithstanding any previous arrangement with the other party deferred payments, the full or full remaining price for any Goods delivered by the innocent party shall become immediately due to him; and - the innocent party shall have the right without prejudice to any other rights and remedies available to him, to cancel and/or suspend or to refuse to accept any further deliveries and/or to terminate the contract at any time after becoming aware of any of circumstances providing that; - when exercising any of the above rights the innocent party informs the other party of his intention to exercise such rights in writing within 28 days after the relevant occurrence.
 - 17.2 Whenever the innocent party exercises any of these rights, the innocent party will not be liable to pay any compensation to the other party.
18. **GENERAL**
 - 18.1 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 notice.
 - 18.2 No waiver by the Company of any breach of contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
 - 18.3 If any provision of these Conditions is held by 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 provisions in question shall not be affected thereby.

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