

Greenwood Group Ltd**Terms and Conditions for the Supply of Goods and Services (the Conditions)****1. WHO WE ARE**

- 1.1 We are Greenwood Plants, an award-winning UK wholesale nursery that specialises (among other things) in growing and supplying plants, shrubs and trees for the application of commercial landscaping.
- 1.2 Greenwood Plants is the trading name of Greenwood Group Ltd a company registered in England and Wales. You can find our registered company details on Companies House under our company number 10136546. Our VAT registration number is 264686662.
- 1.3 In these terms the use of the words **Greenwood, Company, We, Our** and **Us** refers to Greenwood Group Ltd and our trading divisions.
- 1.4 Where we use the terms **Customer, You** and **Your** we are referring to any person or firm who purchases goods and/or services from Us.

2. BASIS OF CONTRACT

- 2.1 Placing an order with Greenwood constitutes an offer by You to purchase Goods or Services or Goods and Services in accordance with these Conditions (the **Order**).
- 2.2 The Order shall only be deemed to be accepted when Greenwood issues written acceptance of the Order at which point and on which date the contract shall come into existence (the **Contract**).
- 2.3 Any illustrations, descriptions, pot sizes and height sizes, technical data or advertising issued by Greenwood and any descriptions of the Goods or illustrations or descriptions of the Services contained in Greenwood's marketing materials, catalogues or lists are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by Greenwood shall not constitute an offer, and is only valid for a period of 90 days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. GOODS

3.1 The goods are as described in the catalogues or lists provided by Greenwood (the **Goods**).

3.2 All varieties included within Our catalogues or lists are offered subject to availability at the time of delivery.

3.3 Greenwood reserves the right to amend the catalogues and lists if required by any applicable statutory or regulatory requirement, and We shall notify You in any such event.

4. DELIVERY OF GOODS

4.1 Unless otherwise set out in Greenwood's quotation or otherwise agreed in writing, delivery shall be made in accordance with EXW (Incoterms 2020). We shall therefore let you know which of our nursery sites the goods are available to collect and the agreed lead times

4.2 Where we agree to deliver the Goods, an appropriate charge will be levied according to the size of the order, the delivery location, and the potential to incorporate other orders on the delivery vehicle. In such instances delivery of the Goods shall be completed on the unloading of the Goods at such location as may be agreed with the Customer before delivery.

4.3 Any dates and lead times quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Greenwood shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event (as defined below) or the Customer's failure to provide Greenwood with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 Where Greenwood agrees to deliver to a site nominated by You, then Our obligations shall be to deliver as near to the site as a safe hard road permits. You shall provide free of charge any labour or machinery required for the purpose of unloading, loading or stacking.

4.5 If Greenwood fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Greenwood shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide

Greenwood with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.6 If the Customer fails to take or accept delivery of the Goods (as the case may be) within three Business Days of Greenwood notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Greenwood's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Greenwood notified the Customer that the Goods were ready; and
- 4.6.2 Greenwood shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If twenty Business Days after the day on which Greenwood notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted (as the case may be) actual delivery of them, Greenwood may resell or otherwise dispose of part or all of the Goods and charge the Customer reasonable storage and selling costs.
- 4.8 Greenwood may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 The Goods supplied by Greenwood under this agreement shall:
- 5.1.1 conform in all material respects to any written identifying description applied to them; and
- 5.1.2 be fit for any purpose held out by Greenwood.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to Greenwood within two (2) days of delivery that some or all of the Goods do not comply with clause 5.1;
- 5.2.2 Greenwood is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by Greenwood) returns such Goods to Greenwood's place of business at Greenwood's cost,

Greenwood shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 Greenwood shall not be liable for the Goods' failure to comply with clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow Greenwood's oral or written instructions as to the storage, planting, or care of the Goods or (if there are none) good horticultural practice regarding the same;
 - 5.3.3 the defect arises from any weather conditions between delivery and a notice in accordance with clause 5.2;
 - 5.3.4 the suitability of any goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were communicated to Greenwood;
 - 5.3.5 where any substitution by Greenwood of the variety, type or species of the Goods does not materially affect the characteristics of the Goods, and the substituted Goods are of an equal quality or superior to those specified; or
 - 5.3.6 the Goods differ from the product catalogues or lists as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, Greenwood shall have no liability to the Customer in respect of the Goods' failure to comply with clause 5.1.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 Greenwood receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment; and
 - 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Greenwood's property;

- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 care and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Greenwood's behalf from the date of delivery;
- 6.3.4 notify Greenwood immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4; and
- 6.3.5 give Greenwood such information as Greenwood may reasonably require from time to time relating to:
 - 6.3.5.1 the Goods; and
 - 6.3.5.2 the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Greenwood receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - 6.4.1 it does so as principal and not as Greenwood's agent; and
 - 6.4.2 title to the Goods shall pass from Greenwood to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, Greenwood may:
 - 6.5.1 by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - 6.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or planted and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

- 7.1 Greenwood shall supply any services to the Customer in accordance with any service specification set out in any quotation (the **Services**) in all material respects.
- 7.2 Greenwood shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

- 7.3 Greenwood reserves the right to amend the service specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Greenwood shall notify the Customer in any such event.
- 7.4 Greenwood warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - 8.1.2 co-operate with Greenwood in all matters relating to the Services;
 - 8.1.3 provide Greenwood, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Greenwood to provide the Services;
 - 8.1.4 provide Greenwood with such information and materials as Greenwood may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 8.1.6 comply with all applicable laws, including health and safety laws; and
 - 8.1.7 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 8.2 If Greenwood's performance of any of its obligations under the Contract are prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 without limiting or affecting any other right or remedy available to it, Greenwood shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Greenwood's performance of any of its obligations;

- 8.2.2 Greenwood shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Greenwood's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse Greenwood on written demand for any costs or losses sustained or incurred by Greenwood arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

- 9.1 The price for Goods:
 - 9.1.1 shall be the price set out in Greenwood's quotation or, if no price is quoted, the price set out in Greenwood's price list as at the date of the order; and
 - 9.1.2 unless otherwise set out in Greenwood's quotation, shall be exclusive of all costs and charges of packaging, insurance, and transport of the Goods, which shall be invoiced to the Customer.
- 9.2 Unless otherwise set out in Greenwood's quotation, the charges for Services shall be calculated on a time and materials basis as shall be calculated in accordance with Greenwood's daily fee rates from time to time.
- 9.3 Greenwood reserves the right to:
 - 9.3.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Greenwood that is due to:
 - 9.3.1.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - 9.3.1.2 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Greenwood adequate or accurate information or instructions in respect of the Goods.
- 9.4 In respect of Goods, Greenwood may invoice the Customer before, on or after delivery.
- 9.5 In respect of Services, Greenwood shall invoice the Customer on completion of the Services or as otherwise agreed in writing.
- 9.6 The Customer shall pay each invoice submitted by Greenwood:

9.6.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by Greenwood and confirmed in writing to the Customer; and

9.6.2 in full and in cleared funds to a bank account nominated in writing by Greenwood, and

time for payment shall be of the essence of the Contract.

9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**) and any other applicable taxes or duties.

9.8 If the Customer fails to make a payment due to Greenwood under the Contract by the due date, then, without limiting Greenwood's remedies under clause 14, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. CANCELLATION OF ORDERS & RETURNS

10.1 The ability of the Customer to cancel any order (pre delivery) or return any Goods delivered under this agreement (save where clause 5.2 applies) shall be at the absolute discretion of Greenwood. Any request to cancel an order or to request a product return must be made in writing to Greenwood and is not accepted until confirmed by Greenwood in writing.

Cancellation, Restocking and Express Order fees are subject to change at any time at the discretion of Greenwood.

Current charges are as follows:

- **Express Order Fee** i.e. where an order is placed after the daily 4pm order cut-off, a fee of 20% of the total value of the order shall apply.
- **Cancellation/ Restocking fee** i.e. where an order is amended, changed, delayed or cancelled after the daily 4pm order cut-off, a fee of 50% of the total value of the order shall apply.

11. INTELLECTUAL PROPERTY

11.1 All Intellectual Property Rights in or arising out of or in connection with the supply of Goods or the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Greenwood or its licensors.

12. DATA PROTECTION

12.1 To the extent that personal data is processed in connection with the Services, the parties shall comply with all applicable privacy and data protection laws and regulations.

13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

13.2.1 death or personal injury caused by negligence;

13.2.2 fraud or fraudulent misrepresentation;

13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

13.2.4 defective products under the Consumer Protection Act 1987.

13.3 Subject to clause 13.2:

13.3.1 Greenwood's total aggregate liability to the Customer in connection with the supply of Goods under any Contract shall not exceed 100% of the total amount paid or payable by the Customer in respect of the Goods supplied under the relevant Contract in respect of which the liability arose; and

13.3.2 Greenwood's total aggregate liability to the Customer in connection with the supply of Services under any Contract shall in no event exceed 100% of the total amount paid or payable by the Customer in respect of Services under the relevant Contract in respect of which the liability arose, and in respect of Services continuing beyond one year shall, in no event, exceed in any year 100% of the total amount paid or payable by the Customer in respect of Services in that year.

- 13.4 Subject to clause 13.2, Greenwood shall not be liable to the Customer for:
- 13.4.1 loss of profits;
 - 13.4.2 loss of sales or business;
 - 13.4.3 loss of agreements or contracts;
 - 13.4.4 loss of anticipated savings;
 - 13.4.5 loss of use or corruption of software, data or information;
 - 13.4.6 loss of or damage to goodwill; and
 - 13.4.7 indirect or consequential loss.
- 13.5 Greenwood has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 Unless the Customer notifies Greenwood that it intends to make a claim in respect of an event within the notice period, Greenwood shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire three years from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13.7 This clause 13 shall survive termination of the Contract.

14. TERMINATION

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing to do so;
 - 14.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium,

being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

14.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

14.2 Without affecting any other right or remedy available to it, Greenwood may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Greenwood if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or Greenwood reasonably believes that the Customer is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract:

15.1.1 the Customer shall immediately pay to Greenwood all of Greenwood's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Greenwood shall submit an invoice, which shall be payable by the Customer immediately on receipt;

15.1.2 the Customer shall return all of Greenwood's materials and any deliverables or Goods which have not been fully paid for.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

16. FORCE MAJEURE

- 16.1 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). This shall include but not be limited to periods of inclement weather (such as storm, drought, freezing temperatures or excessive heat). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 20 days' written notice to the affected party.
- 16.2 If due to a Force Majeure Event Greenwood has insufficient stocks to meet all its commitments, Greenwood may apportion available stocks between its customers at its sole discretion.

17. GENERAL**17.1 Assignment and other dealings**

- 17.1.1 Greenwood may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 17.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Greenwood.

- 17.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 17.2 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

17.3 Waiver.

- 17.3.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 17.3.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or

remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 17.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.5 **Entire agreement.**
- 17.5.1 The Contract constitutes the entire agreement between the parties.
- 17.5.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 17.6 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.7 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 17.8 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.