



EARLEY
ORNAMENTALS
COMMITTED TO QUALITY

Terms and Conditions of Sale

EARLEY ORNAMENTALS LIMITED CONDITIONS OF SALE

1. INTERPRETATION

- 1.1 In these Conditions the following words shall have the following meanings:

“Buyer” the person, firm or company who purchases the Goods from the Seller

“Conditions” the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Seller and the Buyer

“Contract” the contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions

“Goods” any goods, including but not limited to plants and seeds, agreed in the Contract to be supplied to the Buyer by the Seller

“Seller” Earley Ornamentals Ltd, registered in England and Wales with company number 06968765, registered office York Road, Thirsk, North Yorkshire YO7 3AA.

The Sellers Privacy Policy can be seen by visiting <http://earleyornamentals.co.uk/Contacts/Privacy-Policy/> and Cookies Policy <http://earleyornamentals.co.uk/Contacts/Cookies-Policy/> Copies are available on request from the Seller.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions supersede any earlier edition of conditions of sale of the Seller and shall govern the Contract to the exclusion of any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document and the Buyer waives any right which it might have to rely on such terms or conditions.
- 2.2 No variation to these Conditions or any representation about the Goods shall have effect unless expressly agreed in writing and signed by a duly authorised representative of the Seller.
- 2.3 Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.4 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written confirmation of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.
- To facilitate planning and to ensure prompt delivery, the Buyer must place its order well in advance of anticipated sowing dates or, where ordering from surplus stocks, at least 48 hours before the desired delivery contacted by post to the registered office, or by email to info@earleyplants.co.uk
- Please read the Seller's Privacy Policy (<http://earleyornamentals.co.uk/Contacts/Privacy-Policy/>). The Buyer shall ensure that the terms of its order and any applicable specification or any other necessary information relating to the Goods are complete, accurate and given within a sufficient time to enable the Seller to perform the Contract.
- 2.5 Unless otherwise agreed in writing by the Seller, any quotation given by the Seller is valid for a period of 30 days from its date, provided that the Seller has not previously withdrawn it.
- 2.6 Orders are accepted subject to the Seller's expected availability of the Goods determined by reference to the expected crop and processing results. In the event of the crop and processing results being less than such expectation, the Seller shall be entitled to apportion available stocks at its own discretion and to substitute what in its sole opinion is the nearest equivalent of any variety not available (unless the Seller has expressly agreed otherwise in writing with the Buyer) or to cancel the Contract in respect of such Goods as are not available without any liability to the Buyer other than to refund any sums that have been paid under the Contract by the Buyer in respect of such unavailable Goods.

- 2.7 The sale of the Goods shall not be a sale by sample. Any sample of the Goods provided by the Seller is solely to enable the Buyer to obtain a general idea of the Goods and the sale shall be subject to all normal variations between the sample and the bulk.

3. DESCRIPTION

- 3.1 The description of the Goods shall be as set out in the Seller's confirmation of order. In the case of cash and carry sales the description of the Goods shall be as set out in the Seller's invoice.
- 3.2 All descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract.
- 3.3 No employee or agent of the Seller has any authority to give any additional representation or warranty relating to the Goods unless such warranty or representation is expressed in writing and signed by a duly authorised representative of the Seller.

4. HEALTH CERTIFICATES

If the Department for Environment, Food and Rural Affairs (“DEFRA”) (or any body that may take over its responsibilities in the future) requests certificates of plant health for any seeds sold either in the United Kingdom or for export, such certificates will be applied for and issued only subject to the general conditions laid down by DEFRA.

5. DELIVERY

- 5.1 Unless the Seller has agreed in writing to deliver the Goods to the Buyer, delivery shall take place at the Seller's place of business.
- 5.2 Where the Seller has agreed to deliver the Goods, the liability of the Seller to the Buyer for loss or damage to the Goods shall be limited to the price of the Goods, in accordance with paragraph 11 below.
- 5.3 Any date specified by the Seller for delivery of the Goods is an estimate only and time for delivery shall not be made of the essence by notice. If no date has been so specified, delivery will be within a reasonable time.
- 5.4 Subject to the other provisions of these Conditions, the Seller shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods nor will any delay entitle the Buyer to terminate or rescind the Contract.
- 5.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, risk in the Goods will pass to the Buyer and the Seller shall be entitled:
- 5.5.1 to store the Goods until actual delivery and invoice the Buyer for all related costs and expenses (including without limitation storage and insurance); and/or
- 5.5.2 to invoice the Buyer for the full price of the Goods and any disposal costs incurred by the Seller where by their nature the Goods cease to be in a saleable condition before they can be delivered.
- 5.5 The Seller shall be entitled to deliver the Goods in instalments. Each instalment shall constitute a separate contract and failure by the Seller to deliver any one or more instalment shall not entitle the Buyer to treat the whole Contract as repudiated.
- 5.6 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.7 Any claim for short or non-delivery of Goods must be made in writing to the Seller within 48 hours of delivery in the event of short delivery of the Goods, or within 48 hours of date of the Seller's invoice in the event of non-delivery of all Goods ordered.



EARLEY
ORNAMENTALS
COMMITTED TO QUALITY

Terms and Conditions of Sale

EARLEY ORNAMENTALS LIMITED CONDITIONS OF SALE (Continued)

- 5.8 Any liability of the Seller for short or non-delivery of the Goods shall be limited to making up the shortfall or delivering the non-delivered Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5.9 Section 32(2) of the Sale of Goods Act 1979 shall not apply. The Seller shall not be required to give the Buyer the notice specified in section 32(3) of that Act.
- 6. PRICE**
- 6.1 Subject to Condition 6.2 and unless otherwise agreed in writing by the Seller, the price for the Goods including any applicable discounts, but subject to adjustment in accordance with Condition 6.6, shall be as set out in the Seller's price list in force at the date of delivery of the Goods.
- 6.2 The seller reserves the right to invoice in sterling only.
- 6.3 The price for the Goods and any other charges shall be exclusive of any value added tax which the Buyer shall pay in addition.
- 6.4 Where the Seller has agreed to deliver the Goods to the Buyer in mainland Great Britain and the value of the Buyer's order for plants is greater than £300 (three hundred pounds sterling) (excluding VAT) and for seeds and any other dried goods, greater than £50 (fifty pounds sterling) (excluding VAT) the price shall include the Seller's costs of delivery. In all other cases where the Seller agrees to deliver the Goods to the Buyer, costs of delivery shall be added to the price of the Goods and paid by the Buyer. Special delivery arrangements for guaranteed morning, Saturday or evening delivery will be charged at cost.
- 6.5 The Seller reserves the right to charge the Buyer for the costs of any pallets and returnable containers ("Containers") used to transport the Goods, in addition to the price for the Goods. Any such charges will be credited to the Buyer provided that the Containers are returned to the Seller in a clean and undamaged condition within 14 days of delivery of the Goods.
- 6.6 The Seller reserves the right to adjust the price of any variety which is, or becomes, subject to a grant of plant breeders rights under the Plant Varieties and Seeds Act 1964 to include the cost of any royalty payments due to the owner of the rights.
- 7. PAYMENT**
- 7.1 Unless the Seller has granted the Buyer credit terms, payment of the price for the Goods is due before the goods are delivered to the Buyer and may be made by BACS, credit card, switch, cheque or cash. Time for payment shall be of the essence.
- 7.2 The Buyer shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise.
- 7.3 All sums payable to the Seller under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 7.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract (without prejudice to any other right or remedy available to it) the Seller shall be entitled to:
- 7.4.1 suspend further performance of the Contract or any other contract with the Buyer; and/or
- 7.4.2 exercise its right to charge interest under the Late Payment of Commercial Debts (interest) Act 1998 (as amended); and/or
- 7.4.3 payment on demand on a full indemnity basis of all costs and expenses incurred by the Seller in recovering all overdue sums.
- 8. CREDIT ACCOUNTS**
- 8.1 If the Buyer wishes to apply for a credit account, it shall supply trade references from not less than two companies with whom the Buyer has held credit facilities for the past two years and a bank reference. The Buyer consents to the Seller making such credit checks as the Seller deems appropriate.
- 8.2 If the Seller in its absolute discretion decides to grant credit facilities to the Buyer, the Seller will notify the Buyer of the terms of such facilities (which shall normally be payment terms of no later than 28 days from invoice) and shall be entitled to vary or withdraw such terms at any time without giving any reason.
- 8.3 The Seller will not accept orders of a total value of £100 or less unless accompanied by cash.
- 9. RISK AND OWNERSHIP**
- 9.1 The Goods shall be at the risk of the Buyer from the time of delivery.
- 9.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full in cash or cleared funds:
- 9.2.1 all sums payable in respect of the Goods; and
- 9.2.2 all other sums which are or which become payable to the Seller from the Buyer on any account including any interest on such sums.
- 9.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 9.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 9.3.2 store the Goods separately to other goods of the Buyer or any third party in a way that they remain readily identifiable as the Seller's property;
- 9.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 9.3.4 maintain the Goods in satisfactory condition insured for their full price against all risks and hold the proceeds of insurance on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 9.4 The Buyer may resell the Goods before ownership has passed to it solely on the condition that any sale shall be on the Buyer's own behalf in the ordinary course of the Buyer's business and the Buyer shall deal as principal when making such sale.
- 9.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 9.5.1 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors or (being a body corporate) convenes a meeting of creditors, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition is presented for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency of the Buyer; or
- 9.5.2 the Buyer encumbers or in any way charges any of the Goods or suffers or allows any execution to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts or the Buyer ceases to trade.
- 9.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 9.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 10. WARRANTY**
- 10.1 The Seller warrants (subject to the other provisions of these Conditions including, without limitation Condition 2.7) that upon delivery the Goods will comply with their description, will be free from notifiable pests and diseases or other material defects and where applicable, will comply with the UK Seeds Regulations currently in force.
- 10.2 The Seller shall not be liable for a breach of the warranty in Condition 11.1 unless:



EARLEY
ORNAMENTALS
COMMITTED TO QUALITY

Terms and Conditions of Sale

EARLEY ORNAMENTALS LIMITED CONDITIONS OF SALE (Continued)

- 10.2.1 the Buyer gives notice of any defect to the Seller:
- (a) within 24 hours of delivery where the Goods are damaged in transit;
 - (b) within 48 hours of delivery where the Goods do not comply with their description;
 - (c) within 7 days of delivery where the defect is apparent on reasonable inspection on delivery; and
 - (d) within 7 days of discovery of the defect where the defect is not apparent on reasonable inspection on delivery, provided that any such notice is formally confirmed in writing within 7 days but in any event within 28 days of delivery;
- 10.2.2 the Buyer provides clear proof that the Goods alleged to be in breach of warranty are in fact Goods supplied by the Seller and (where the Buyer is claiming that the defect was not apparent on reasonable inspection on delivery) that the Buyer has followed all prudent and accepted industry practices and any written instructions given by a duly authorised representative of the Seller as to the care, treatment and/or storage of the Goods; and
- 10.2.3 the Seller is given a reasonable opportunity to examine the Goods and the Buyer (if asked to do so by the Seller) returns the Goods to the Seller's place of business at the Buyer's expense for the examination to take place there.
- 10.3 The Seller shall not be liable for a breach of the warranty in Condition 11.1 where the defect arises from:
- 10.3.1 wear and tear, wilful damage, the Buyer's negligence or failure to take reasonable care of the Goods or misuse, mistreatment or inappropriate storage of the Goods or failure to follow any written instructions given by a duly authorised representative of the Seller or from adverse weather conditions, contamination, pest or disease following delivery; or
 - 10.3.2 the application of any treatment, chemical or otherwise, by the Seller at the Buyer's request, where the Seller has carried out such treatment in the correct manner and/or in accordance with the manufacturer's instructions.
- 10.4 The Seller shall not be liable for breach of the warranty in Condition 11.1 in respect of resultant crops where seeds purchased under this Contract are used for re-sale purposes.
- 10.5 Subject to Conditions 10.2, 10.3 and 10.4, if any of the Goods do not conform with the warranty in Condition 10.1 the Seller shall at its option replace such Goods (or the defective parts) or refund the price of such Goods at the pro rata Contract rate and shall have no further liability for the breach of warranty in respect of such Goods. If the Seller so requests, the Buyer shall, at the Buyer's expense, return the Goods or the parts of such Goods which are defective to the Seller.

11. LIMITATION OF LIABILITY

- 11.1 Subject to Condition 12, the following provisions set out the entire liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 11.1.1 any breach of these Conditions; and
 - 11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or for fraudulent misrepresentation.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 11.4 and 11.5

- 11.4 Subject to Conditions 11.2 and 11.3:
- 11.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Goods the subject of the claim; and
 - 11.4.2 whether or not the Seller has been advised of the possibility of such a loss, the Company shall not be liable to the Buyer for any direct loss of profit or for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of good-will or otherwise), costs, expenses or other claims for indirect and/or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11.5 **THE BUYER ACKNOWLEDGES THAT THE CONTRACT PRICE IS BASED ON THE ASSUMPTION THAT THE LIABILITY OF THE SELLER AND THE BUYER IS AS SET OUT HEREIN.**