

THE EMERALD GROUP (*The Seller*)

TERMS OF BUSINESS AND CONDITIONS OF SALE

1. GENERAL

These conditions of sale apply to every order accepted by the Seller to the exclusion of any conflicting terms and conditions stipulated, incorporated or referred to by the Buyer in an order or in any document, correspondence or negotiations. No variation of these terms shall be valid unless agreed in writing by the Buyer and the Seller.

2. SIZING OF TREES

All cut trees are measured from the base to where the laterals fold on the leader. All containerised trees are measured from root collar level to top of leader.

3. CONFIRMATION OF ORDERS

Orders will be confirmed subject to availability of stock. The Seller reserves the right to offer substitute product lines, without penalty or liability, where stock is unavailable to fill confirmed orders. The Seller undertakes to provide notice of such substitutions by 10 November. No substitution will be made without the written acceptance of the Buyer.

4. VARIATION / CANCELLATION OF ORDERS

Once an order has been placed by the Buyer and accepted by the Seller, the Buyer may only cancel or vary such order on or before 30 September. Thereafter it is irrevocable and the buyer must pay for all goods ordered.

5. DELIVERY

- a) The Buyer is obliged to fax any signed amendments to the delivery note to the seller within 24 hours of delivery.
- b) To ensure speedy resolution of any queries, all discrepancies in each individual product must be notified to the Seller at time of delivery. The Seller cannot give credit for shortages which are not notified immediately.
- c) Orders which are delivered on pallets may vary by +/- 10% from the order placed by the Buyer.
- d) The Buyer agrees to accept any variation of +/- 10% from the original order and agrees to pay for the number of trees delivered.
- e) Where on further inspection the quality, quantity or condition of the goods is not acceptable to the Buyer, complaints must be notified to the Seller in writing within 48 hours of delivery. No credits will be given in relation to complaints not notified within this 48 hour period.
- f) A postponement of the delivery time by up to fourteen (14) days because of the Seller's circumstances shall be deemed to be on-time delivery in every respect, and the Buyer may not make any claims against the Seller on these grounds. Neither shall such circumstances at the Buyer give the Buyer any right to cancel the order or refuse to accept the goods on delivery.

6. RISK AND TITLE

- a) Risk of loss or damage to goods and each consignment, thereof, shall pass from the Seller to the Buyer when the carrying vehicle transporting the goods or any consignment thereof arrives at the Buyer's premises. Where the Buyer or the Buyer's agent collects the goods, the risk on goods so collected shall pass on collection. Where excessive needledrop occurs on delivered trees, the Seller will only accept responsibility for those trees which were unpacked from pallets and netting within 24 hours and where needledrop has occurred the Seller must be notified within 7 days of delivery. The buyer has a duty to unpack and keep the trees fresh and the Seller is not responsible for any deterioration in quality or freshness which occurs more than 24 hours after delivery.
- b) Title to goods or any consignment thereof, shall remain the Seller's until receipt in full without any

deduction or withholding (including VAT and delivery charges if applicable). At any time before full payment has been made, the Seller shall be entitled to recover the goods (or the consignment in question) and for this purpose, the Buyer hereby gives licence to the Seller, its Agents and Servants to enter upon the premises where the goods may be from time to time be situated for the purposes of recovering same.

7. PRICES

Prices quoted on all orders are accepted on the basis that the invoice price payable by the buyer shall be the price ruling at the date of the order. Trade prices in the catalogue or price lists are exclusive of VAT.

8. CREDIT TERMS

Where no credit facilities have been agreed in advance, payment by the Buyer to the Seller shall be made on or before delivery of the goods on presentation of a Proforma Invoice. If such payment exceeds the value of goods delivered, the Seller shall refund the excess balance within 14 days.

The Seller reserves the right to refuse credit terms without disclosing the reasons therefore or disclosing any information acquired by the Seller in establishing the creditworthiness of the Buyer. Where prior agreement has been reached between the Buyer and the Seller to allow the Buyer credit facilities, payment shall be made by the Buyer to the Seller within 30 days of the date of delivery of the trees or such other date as may be specified by the Seller in its order confirmation.

9. OVERDUE ACCOUNTS

The Seller will agree Payment Terms with the Buyer prior to delivery. The Buyer accepts that non payment of the outstanding sum due, on the due date, will incur extended credit charges at the rate of 1.5% per month or part month on any invoices for which payment is due and has not been received.

10. FORCE MAJEURE

The seller shall be under no liability whatsoever for any failure or delay in performing the contract by reason of any cause whatsoever, beyond reasonable control of the Seller. The Seller shall have the right in such circumstances either to extend the contractual time for delivery by such period as it considers reasonable of which due notice shall be given to the Buyer, or to cancel the contract in whole or part, without liability to the Buyer.

11. EXCLUSION OF LIABILITY

The Seller shall not be liable for any loss or damage or destruction of the Buyer's property or any part thereof sent to its stores. The Seller shall not in any circumstances be liable for indirect or consequential loss or damage nor for loss of profit nor for any other additional costs incurred by the Buyer in sorting, restacking or disposing of the Goods or otherwise, however arising. The Seller accepts no responsibility for any damage or loss direct or indirect which may arise after the Goods have left the Seller except to the extent outlined under the heading 'Risk and Title' above. No responsibility is accepted by the Seller as to the suitability of the Goods for any particular purpose whether such purpose is communicated by the Buyer to the Seller or not. The Seller will not be liable for claims by third parties against the Buyer and the Buyer agrees to keep the Seller fully indemnified in this respect without time limit. No claim for compensation may ever exceed the invoice price of the Goods supplied.