

STANDARD CONDITIONS OF SALE

1. INTERPRETATION

- 1.1 In these Conditions:
 "Purchaser" means any person who accepts a quotation of the Seller for the sale of the Goods of whose order for the Goods is accepted by the Seller;
 "Goods" means the Goods (including any instalment of the Goods or any parts of them) which the Seller is to supply in accordance with these Conditions;
 "Seller" means Pentland Plants, Pentland Nurseries, Loanhead, Midlothian;
 "Conditions" means the standard terms and conditions of sale set out in this document and, in so far as they do not conflict with the standard conditions of sale, the Terms of Business set out on page 1 of this Catalogue and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Purchaser and the Seller;
 "Contract" means the Contract for the purchase and sale of the Goods.

2. BASIS OF THE SALE

- 2.1 The Seller shall sell and the Purchaser shall purchase the Goods in accordance with any Order Acknowledgement issued by the Seller which is accepted by the Purchaser, or any written or verbal order of the Purchaser which is accepted by the Seller by an Order Acknowledgement, subject in either case to the terms of the Seller's Order Acknowledgement and these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such Order Acknowledgement is accepted or purported to be accepted, or any such order is made or purported to be made, by the Purchaser.
- 2.2 The Purchaser shall be deemed to have accepted the terms and conditions of the Seller's Order Acknowledgement and the conditions unless the Purchaser intimates the contrary to the Seller in writing within two working days of receipt of the Seller's Order Acknowledgement.
- 2.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Purchaser and the Seller.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing.

3. ORDERS AND SPECIFICATIONS

- 3.1 No order submitted by the Purchaser shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 3.2 Subject to clause 3.3 below the quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's Order Acknowledgement. The Purchaser shall be responsible to the Seller for ensuring the accuracy of any order (including any applicable specification).
- 3.3 The Contract is subject to the Goods being available from the Seller's stock at the time of delivery. The Seller reserves the right to make any changes in the specification of the Goods as recorded on the Order Acknowledgement which are unavailable from the Seller's stock so as to substitute the nearest equivalent Goods unless an order is clearly marked no substitutes by the Purchaser.
- 3.4 No order which has been accepted by the Seller may be cancelled by the Purchaser except with the agreement in writing of the Seller and on the terms that the Purchaser shall pay to the Seller by way of liquidated damages (and without the Seller having to prove loss):-
 3.4.1 in the case of cancellation in the period 6 to 12 weeks before delivery 25%;
 3.4.2 in the case of cancellation in the period 3 to 5 weeks before delivery 50% and
 3.4.3 in the case of a cancellation in the period less than 3 weeks before 90%
 in each case of the full price stated on the Seller's Order Acknowledgement and Value Added Tax thereon. Notwithstanding the terms of this condition the Seller shall be entitled to seek further compensation for its loss in unusual circumstances.

4. PRICE OF GOODS

- 4.1 The price of Goods shall be the price stated on the Seller's Order Acknowledgement.
- 4.2 The Seller reserves the right, by giving notice to the Purchaser at any time before delivery, to increase the price of Goods to reflect any increase in the cost to the Seller [of producing the Goods] which is due to any factor beyond the control of the Seller.
- 4.3 All Goods will normally be supplied carriage paid by the Seller except where specifically excluded in terms of the Seller's Order Acknowledgement.
- 4.4 The price is exclusive of any applicable Value Added Tax, which the Purchaser shall additionally pay to the Seller.

5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Purchaser and the Seller, the Seller

shall be entitled to invoice the Purchaser for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Purchaser or the Purchaser wrongfully fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery, in which event the Seller may invoice the Purchaser for the price at any time after the Seller has notified the Purchaser that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

- 5.2 The Purchaser shall pay the price of the Goods (less any discount to which the Purchaser is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Purchaser. The time of payment of the price shall be of the essence of the Contract.
- 5.3 If the Purchaser fails to make payment on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 cancel the Contract or suspend any further deliveries to the Purchaser;

5.3.2 appropriate any payment made by the Purchaser to such of the Goods (or the Goods supplied under any other Contract between the Purchaser and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Purchaser); and

5.3.3 charge the Purchaser interest (both before and after any decree or judgement) on the amount unpaid, at the rate of 2 per centum per month, until payment in full is made.

5.3.4 In addition if the Customer defaults on payment the Company reserves the right to place the matter in the hands of their debt recovery agents, without prior warning in writing, and shall be entitled to a full reimbursement of any fees or disbursements paid to the debt recovery agent to aid recovery of monies outstanding to the Company.

6. DELIVERY

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Purchaser's address as stated on the Seller's Order Acknowledgement or, if agreed by the Seller, at another place requested by the purchaser, or by the Purchaser collecting the Goods at the Seller's premises at any time after the Seller has notified the Purchaser that the Goods are ready for collection.

- 6.2 Any dates quoted for delivery of the Goods are target dates only and the Seller shall not be obliged to deliver by said date. If the Seller is unable to deliver on the target date the Seller shall notify the Purchaser of that fact as soon as it becomes apparent. The Goods may be delivered by the Seller in advance of the target date on reasonable notice to the Purchaser.

- 6.3 Where the Goods are to be delivered in instalments each delivery shall constitute a separate Contract and neither failure by the Seller to deliver any instalment with these Conditions nor any claim by the Purchaser in respect of any one or more instalment shall not entitle the Purchaser to treat the Contract as a whole as repudiated.

7. RISK AND PROPERTY

- 7.1 Risk or damage to or loss of the Goods shall pass to the Purchaser:

7.1.1 in the case of Goods to be delivered at the Seller's premises, when the Seller notifies the Purchaser that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Purchaser wrongfully fails to take delivery, when the Seller has tendered delivery of the Goods.

- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any provision of these Conditions, the property in the Goods shall not pass to the Purchaser until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Seller to the Purchaser for which payment is then due.

8. WARRANTIES AND LIABILITY

- 8.1 The varieties comprised in the Goods will correspond with their specification as set out in the invoice at the time of delivery. Beyond this the Goods are sold without warranty, express or implied as to description, quality, productivity or freedom from pest and disease and in particular the Seller will have no liability to the Purchaser for any disease, pest, damage or defect which is not discoverable by reasonable inspection of the Goods at the time of delivery or within a 7 day period thereafter.

- 8.2 Any claim by the Purchaser which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall

(whether or not delivery is refused by the Purchaser) be notified to the Seller by annotation of the delivery sheet/despatch note by the Purchaser countersigned by the Seller's delivery agent or (where the defect or failure not apparent on reasonable inspection) by notice in writing to the Seller within 7 days from the date of delivery. If delivery is not refused and the Purchaser does not notify the seller accordingly, the Purchaser shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Purchaser shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 8.3 Where any valid claim in respect of any of the Goods which is based on any defect in the quality and condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion refund to the Purchaser the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Purchaser.

- 8.4 The seller shall not be liable to the Purchaser for any consequential loss or damage (whether for loss of profit or otherwise), cost, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Purchaser.

- 8.5 The Seller shall not be liable to the Purchaser nor be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.

9. INSOLVENCY OF PURCHASER

- 9.1 This Clause applies if:

9.1.1 the Purchaser becomes apparently insolvent or makes any arrangement with its creditors, or being a company goes into liquidation whether voluntary or compulsory (otherwise than a voluntary liquidation of a solvent company for the purposes of amalgamation or reconstruction) or being an individual or a firm is sequestered;

9.1.2 the Purchaser being a Company an administration order is made in relation to it or a receiver appointed over any of the property or assets of the Purchaser; or

9.1.3 the Purchaser ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the above events is about to occur and notifies the Purchaser accordingly.

- 9.2 If this Clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Purchaser, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. PLANT BREEDERS RIGHTS

- 10.1 The Purchaser will not use the Goods other than for flower production without the prior written consent of the owner of the plant variety concerned and in particular the Purchaser shall not use the Goods for the propagation of legally protected varieties unless the Purchaser holds a licence from the owner of the plant variety concerned.

- 10.2 No plant material comprised in the Goods will be sold on by the Purchaser except under the relevant variety name or trade name.

- 10.3 If the Purchaser finds a mutant in the plant variety forming part of the Goods the Purchaser will inform the Seller forthwith in writing and make its offspring available for viewing and/or testing purposes to the Seller or to the owner of the breeder's rights free of charge.

- 10.4 The Purchaser shall give to the Seller or owner of the breeder's rights in any variety forming part of the Goods access to the Goods at any time in order to check their use.

- 10.5 The Seller shall be entitled to charge an additional royalty charge over and above the price in respect of all legally protected varieties.

- 10.6 The Purchaser shall indemnify the Seller in respect of any loss, injury or damage caused as a result of violation by the Purchaser of the plant breeder's rights.

11. GENERAL

- 11.1 The Seller and the Purchaser agree that if any of these conditions are found to be unenforceable then only such clause or part of a clause as is unenforceable shall fail and the remaining clauses will stand separately and remain enforceable.

- 11.2 This Contract shall be governed by the Law of Scotland.