



# Maelor Forest Nurseries

BSWGROUP member of binderholz

## Maelor Forest Nurseries Ltd (the "Company") – Terms & Conditions of Sale

### 1. Definitions and Interpretation

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 9.2.

**Contract:** the contract between the Company and the Customer for the sale and purchase of the Stock in accordance with these Conditions.

**Customer:** the person, company or firm who purchases the Stock from the Company.

**Delivery Location:** has the meaning given in clause 3.1.

**Order:** the Customer's order for the Stock, as set out in the Customer's purchase order or in the Company's order acknowledgement, as the case may be.

**Stock:** the stock set out in the Order.

### 2. Basis of contract

**2.1** 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.

**2.2** The Order constitutes an offer by the Customer to purchase the Stock in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

**2.3** The Order shall only be accepted when the Company issues an acknowledgement of the Order or delivers the Stock, at which point the Contract shall come into existence.

**2.4** Any samples, descriptive matter (including in relation to sizes) or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures, or in any quotation, are produced for the sole purpose of giving an approximate idea of the Stock referred to in them. They shall not form part of the Contract nor have any contractual force.

### 3. Delivery

**3.1** The Company shall deliver (or make available for collection) the Stock to the location set out in the Order or such other location as the parties may agree ("Delivery Location").

**3.2** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Stock that is caused by the Customer's failure

to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Stock, or not being available to accept the Stock at the Delivery Location.

**3.3** If the Customer fails to take delivery of the Stock: (a) at the Delivery Location, the Company may store the Stock at the Customer's risk and cost at an alternative location, and the Company may charge for any additional attempts to deliver the Stock, and (b) within three Business Days of the Company notifying the Customer that the Stock is available, the Company may reclaim, resell or otherwise dispose of part or all of the Stock and, after deducting reasonable storage, delivery, packaging and selling costs, account to the Customer for any excess over the price of the Stock or charge the Customer for any shortfall below the price of the Stock.

**3.4** The Company may deliver the Stock by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

**3.5** No Order may be cancelled without the Company's prior written agreement. Any complaint must be communicated to the Company within 2-days of delivery of the Stock and followed up in writing within 7-days of delivery.

### 4. Quality

The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

### 5. Title and risk

**5.1** The risk in the Stock shall pass to the Customer on delivery.

**5.2** Title to the Stock shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for (a) the Stock and (b) any other stock that the Company has supplied to the Customer in respect of which payment has become due ("**Other Stock**"), in which case title to the Stock shall pass at the time of payment of all such sums.

**5.3** Until title to the Stock has passed to the Customer, the Customer shall:

- (a) store the Stock separately from all other goods held by the Customer so that it remains readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Stock;
- (c) maintain the Stock in satisfactory condition and keep it insured against all risks for its full price from the date of delivery.

**5.4** At any time before title to the Stock passes to the Customer, the Company may require the Customer to deliver up all Stock (and Other Stock) in its possession that has not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Stock (or Other Stock) is stored in order to recover it.

## 6. Price and payment

- 6.1** The price of the Stock shall be the price set out in the Order. Price lists, catalogue prices and website prices are subject to amendment without notice.
- 6.2** The price of the Stock excludes: (a) amounts in respect of value added tax or other sales tax (**VAT**), which the Customer shall additionally be liable to pay to the Company at the prevailing rate, subject to its receipt of a valid VAT invoice; and (b) the costs and charges of packaging, insurance and transport of the Stock, which shall be invoiced to the Customer. Orders made after 31 May in any year will attract a cold store surcharge of £5 per thousand trees for each week or part week after that date up to the date of delivery to the Delivery Location.
- 6.3** The Customer shall pay each invoice submitted by the Company prior to delivery of the Stock or, if credit terms have been agreed in writing, within 30 days of the date of the invoice. If the Customer is placing an Order for the first time and requires credit, they must first provide two trade references and a bank reference.
- 6.4** If the Customer fails to make a payment due to the Company under the Contract by the due date then, without limiting the Company's remedies under clause 8, 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 6.4 will accrue each day at 8% a year above the Bank of England's base rate from time to time.
- 6.5** 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).

## 7. Limitation of liability

- 7.1** Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (d) defective products under the Consumer Protection Act 1987.
- 7.2** Subject to clause 7.1, the Company's total liability to the Customer (whether in contract, tort (including negligence), misrepresentation, restitution or otherwise) shall not exceed the invoiced value of the Stock.
- 7.3** Subject to clause 7.1, the following types of loss are wholly excluded: (a) loss of profits; (b) loss of sales or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of or damage to goodwill; and (g) indirect, special or consequential loss.

## 8. Termination

- 8.1** Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 8.2** On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Stock supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 8.3** Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

## 9. General

- 9.1 Entire agreement:** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 9.2 Variation:** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 9.3 Intellectual Property:** Nothing in the Contract shall give the Customer any rights in or to the Company's intellectual property and in no circumstances shall the Customer use the Stock for breeding or cloning purposes or take any steps to identify the genetic make-up of the Stock. The Customer will indemnify the Company on demand for any loss or damage suffered by the Company as a result of a breach of this paragraph.
- 9.4 Force Majeure:** Neither party shall be in breach of the Contract (other than non-payment) if it results from an event, circumstance or cause beyond its reasonable control.
- 9.5 Severance:** If any 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.
- 9.6 Governing law and Jurisdiction:**
- (a) 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 laws of England and Wales.
- (b) 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 this Contract or its subject matter or formation.