

1. INTERPRETATION

1.1 Definitions:

Business Day

a day other than a Saturday, Sunday or public holiday in England, when UK clearing banks in the city of London are open for general business.

Collection Location Conditions

has the meaning given in clause 4.1.

the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

Contract

the contract between Lovania and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer

the person or firm who purchases the Goods from Lovania.

Delivery Location

has the meaning given in clause 4.1.

Force Majeure Event

an event, circumstance or cause beyond a party's reasonable control and including but not limited to, severe or adverse weather conditions, breakdown of equipment or machinery (including but not limited to potting machines and heaters) disease or pest affecting the Goods (which could not reasonably have been prevented by Lovania), transportation and border delays, epidemic or pandemic disease (including but not limited to COVID 19) as well as any law, governmental order, rule, regulation, direction, curfew restriction, quarantine or other act of the competent authorities implemented to combat such pandemic diseases, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent and any acts of God, flood, drought, earthquake or other natural disaster.

Goods

the goods (or any part of them) set out in the Order.

Lovania

Lovania Nurseries Limited of 188 Blackgate Lane, Tarleton, Preston, PR4 6UU (registered in England and Wales with company number 03921428).

Order

the Customer's order for the Goods, as may be made verbally, or as set out in the Customer's purchase order form or written acceptance of Lovania's quotation or otherwise in writing (including by way of email), as the case may be.

Specification

where applicable, any specification for the Goods that is agreed in writing by the Customer and Lovania.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body

(whether or not having separate legal personality).

- (b) A reference to a party includes its personal representatives, successors and permitted assigns.

- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- (e) A reference to **writing** or **written** includes email but not fax.

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

- 2.2 The Order constitutes an offer by the Customer to purchase the Goods 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 deemed to be accepted when Lovania issues a written acceptance of the Order (including by email), at which point the Contract shall come into existence, or upon Lovania beginning to fulfil the Order, where earlier.

- 2.4 Lovania is only obligated to use its reasonable endeavours to provide the Goods ordered by the Customer. Due to the nature of the Goods, the Customer agrees that Lovania shall have no liability for any failure to supply the Goods, save as set out in clause 4.7.

- 2.5 Any quotation or estimate for the Goods given by Lovania from time to time shall not constitute an offer.

3. GOODS

- 3.1 The Goods are described in Lovania's catalogue as modified or supplemented by any applicable Specification or other written description provided by Lovania.

- 3.2 Lovania reserves the right to amend:
- (a) any Specification of the Goods if required by any applicable statutory or regulatory requirement without notice to the Customer; and
 - (b) the mix of the type of Goods supplied.

4. DELIVERY

- 4.1 Unless Lovania has agreed that the Customer may collect the Goods from Lovania's premises at 188 Blackgate Lane, Tarleton, Preston, PR4 6UU or such other location as may be advised by Lovania prior to delivery (**Collection Location**), Lovania shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).

- 4.2 The Customer shall return or make available for collection by Lovania all packaging, plastics and promotional materials requested by Lovania together with all trolleys and other delivery equipment provided by Lovania for the purposes of delivery.

- 4.3 If Lovania has agreed that the Goods may be collected by the Customer, the Customer shall collect them from the Collection Location on the date specified by Lovania.

- 4.4 Unless stated otherwise on the Order the Goods may be delivered in articulated lorries. The Customer shall ensure:

- (a) that the delivery vehicles can access the Delivery Location;
- (b) that they provide suitable staff and equipment for unloading the Goods; and
- (c) that they provide the Seller with adequate instructions for delivery of the Goods and any other instructions that are relevant to the supply of the Goods.

- 4.5 Unless Lovania or any third-party courier has agreed to be responsible for

unloading the Goods at the Delivery Location or loading the Goods at the Collection location, on arrival of the Goods at the Delivery Location the Customer shall be responsible for the unloading of the Goods from the delivery vehicle and the Customer shall be responsible for loading the Goods at the Collection Location.

- 4.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Lovania shall not be liable for any delay in delivery of the Goods or any failure to deliver the Goods that is caused by a Force Majeure Event or any default on the part of the Customer (including but limited to any failure to comply with clause 4.4).

- 4.7 The parties agree that unless Lovania has already invoiced the Customer for Goods, Lovania shall have no liability for any failure to deliver the Goods (or any of them) ordered by the Customer. If Lovania has invoiced the Goods and fails to deliver the Goods (not due to any default of the Customer) then 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.

- 4.8 The Goods shall be deemed to have been delivered:

- (a) where Lovania is delivering the Goods, upon the arrival of the Goods at the Delivery Location or as close to the Delivery Location as is reasonably practicable for the vehicle to approach; or
- (b) where the Customer is collecting the Goods, at the time agreed for collection on the agreed collection date, or where no time has been agreed, at 9am on the agreed collection date.

- 4.9 If the Customer fails to collect the Goods on the agreed date or fails to accept actual delivery of Goods being delivered by Lovania then, except where such failure or delay is caused by a Force Majeure Event or Lovania's failure to comply with its obligations under the Contract: Lovania shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including penalties received from any third party haulier, storage costs, redelivery costs, costs incurred in protecting and maintaining the Goods and insurance).

- 4.10 If the Customer does not collect or accept actual delivery of the Goods on the date agreed, Lovania may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

- 4.11 If Lovania delivers more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Lovania shall make a pro rata adjustment to the invoice for the Goods.

- 4.12 Lovania 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

- 5.1 The Goods are natural products and are subject to variation in growth, appearance (including colour), grading, and survival rates. Therefore, any descriptions, illustrations, specifications, figures and dimensions provided by Lovania or contained in Lovania's catalogues, price list, website or anywhere else represents a general concept of the Goods only and shall not form part of the Contract.

- 5.2 Although Lovania uses commercially reasonable endeavours to protect against disease and pests affecting the Goods, this cannot be guaranteed and subject to clause 5.5, Lovania accepts no liability for any losses incurred by the Customer as a result of or connected with the supply of any diseased Goods.

- 5.3 The Customer agrees, acknowledges and accepts that it is wholly responsible from delivery for protecting and

maintaining the Goods and keeping the Goods free from disease, pests and exposure to unsuitable environments and conditions. If defects in the Goods are not evident on delivery (and notified to Lovania within 2 (two) days thereafter) the Customer agrees, acknowledges and accepts that Lovania shall not accept liability due to an inability to determine whether the Goods were defective on delivery or if the defect has manifested itself thereafter.

- 5.4 Lovania warrants that on delivery the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.5 Subject to clause 5.6, if:

- (a) the Customer gives notice in writing to Lovania within 2 (two) days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.4;
- (b) Lovania is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Lovania) returns such Goods to Lovania's place of business at the Customer's cost, Lovania shall, at its option replace the defective Goods or refund the price of the defective Goods in full.

- 5.6 Lovania shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.4 if:

- (a) the Goods fail by reason of weather or other conditions occurring following deemed delivery of the Goods;
- (b) the Goods become defective as a result of the Customer's improper handling of the plants;
- (c) the Goods become defective as a result of the Customer's failure to protect and maintain the Goods and to keep the Goods free from disease, pests and exposure to unsuitable environments and conditions, including any failure to follow Lovania's oral or written instructions as to the storage, transport, planting or care of the Goods or (if there are none) good trade practice regarding the same;
- (d) the defect arises during transportation of the Goods by the Customer or any other third party not arranged by Lovania;
- (e) the Customer plants or makes any further use of such Goods after giving notice in accordance with clause 5.5;
- (f) the defect arises as a result of wilful damage, negligence, or abnormal storage or conditions; or
- (g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.7 Except as provided in this clause 5, Lovania shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.4.

- 5.8 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.

- 5.9 These Conditions shall apply to any repaired or replacement Goods supplied by Lovania.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) Lovania 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
- (b) 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:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Lovania's property;

- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Lovania immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give Lovania such information as Lovania may reasonably require from time to time relating to:
- the Goods; and
 - 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 Lovania receives payment for the Goods. However, if the Customer resells the Goods before that time:
- title to the Goods shall pass from Lovania 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, Lovania may:
- 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
 - require the Customer to deliver up all Goods in its possession that have 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 Goods are stored in order to recover them.
- 7. PRICE AND PAYMENT**
- 7.1 The price of the Goods shall be the price agreed by the parties in writing (including by email).
- 7.2 Any rebates, discounts or other pricing incentives offered by Lovania are only binding if in writing and signed by an authorised representative of Lovania. The Customer must meet all relevant terms on which the rebate, discount or other pricing incentive is offered (including any minimum order quantities and other volume requirements).
- 7.3 For the avoidance of doubt, any rebates granted to the Customer shall be provided net of any credit notes.
- 7.4 Lovania may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond Lovania's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - any delay caused by any instructions of the Customer or failure of the Customer to give Lovania adequate or accurate information or instructions.
- 7.5 The price of the Goods:
- excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Lovania at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - unless the Customer is collecting the Goods or otherwise arranges its own transportation of the Goods, includes the costs and charges of packaging, insurance and transport of the Goods.
- 7.6 Lovania may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.7 The Customer shall pay each invoice submitted by Lovania:
- within 30 days of the date of the invoice or in accordance with any credit terms agreed by Lovania and confirmed in writing to the Customer; and
 - in full and in cleared funds to a bank account nominated in writing by Lovania, and time for payment shall be of the essence of the Contract.
- 7.8 If Lovania agrees to offer or considers offering credit terms to the Customer:
- the Customer agrees that Lovania (or its appointed representative or trade credit insurer) may first undertake a credit check on the Customer's financial health; and
 - Lovania may reduce or revoke the credit terms by notice to the Customer at any time.
- 7.9 If the Customer fails to make a payment due to Lovania under the Contract by the due date, then, without limiting Lovania's remedies under clause 9:
- Lovania shall be entitled to revoke any discount or rebate previously granted to the Customer;
 - Lovania shall notify any relevant trade credit insurer giving full details of the transaction, the Customer debt and the Contract;
 - the Customer shall reimburse Lovania for all costs, losses, expenses and fees (including debt recovery agent fees, court fees, legal and other professional costs) administration and management and labour costs incurred or agreed to be paid by Lovania in order to recover the debt; and
 - 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 7.9 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%.
- 7.10 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).
- 8. LIMITATION OF LIABILITY**
- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2, for the avoidance of all doubt Lovania's total liability to the Customer shall not exceed the purchase price for the Goods set out in the relevant Order to which the claim relates.
- 8.4 Where Lovania has arranged and contracted for the transportation of the Goods via a third party courier or haulier then its liability for mis-delivery, loss of or damage to the Goods shall be limited to the amount it is able to recover (using reasonable commercial endeavours only) from the relevant courier or haulier under its terms.
- 8.5 Subject to clause 8.2, the following types of loss are wholly excluded:
- loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of use or corruption of software, data or information;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
- 8.6 This clause 8 shall survive termination of the Contract.
- 9. TERMINATION**
- 9.1 Without limiting its other rights or remedies, Lovania may terminate this Contract with immediate effect by giving written notice to the Customer if:
- the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - the Customer 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;
 - the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - the Customer'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.
- 9.2 Without limiting its other rights or remedies, Lovania may suspend provision of the Goods under the Contract or any other contract between the Customer and Lovania if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or Lovania reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, Lovania 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.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to Lovania all of Lovania's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Lovania shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at 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.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 10. FORCE MAJEURE**
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 8 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party. For the avoidance of doubt, a party shall not be relieved of its payment obligations by reason of a Force Majeure Event.
- 11. GENERAL**
- 11.1 Assignment and other dealings.**
- Lovania may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
 - The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Lovania.
- 11.2 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.
 - Each party agrees that it shall have no remedies in respect of 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.
- 11.3 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.4 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 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 of the Contract is deemed deleted under this clause 11.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.6 Notices.**
- Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - sent by email to the address specified in the Order or as otherwise notified by the other party.
 - Any notice or communication shall be deemed to have been received:
 - if delivered by hand, at the time the notice is left at the proper address;
 - if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 - This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.7 Third party rights.**
- Unless it expressly states otherwise, 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.
 - The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.8 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.
- 11.9 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.