

Terms and Conditions of Sale

1. Interpretation

1.1. In these conditions the following definitions shall apply:

“ Company ”	Mobilane (UK) Limited;
“ Contract ”	the contract between the Company and the Customer for the sale and purchase of Goods;
“ Customer ”	the company, firm or sole trader from whom an order is received;
“ Goods ”	the goods agreed in the Contract to be supplied to the Customer by the Company including (where the context so permits) services;
“ Specification ”	the specification for the Goods as stated in the Company’s technical literature or as otherwise agreed in writing between the Company and the Customer.

1.2. The headings of conditions are for convenience only and shall not affect their interpretation.

1.3. References to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.4. These conditions incorporate the Royal Dutch Wholesalers Association for Flowerbulbs and Nursery Stock terms and conditions. In the event of any conflict or ambiguity between these conditions and the Royal Dutch Wholesalers Association for Flowerbulbs and Nursery Stock terms and conditions, the provisions of these conditions will prevail.

2. Quotations, Contracts and Variations

2.1. Quotations by the Company are subject to alteration or withdrawal at any time without notice but unless previously withdrawn shall be open for consideration by the Customer for thirty (30) days (or other period therein stated) from the date of the quotation.

2.2. These conditions shall be incorporated in all Contracts by the Company to the exclusion of any terms and conditions referred to by the Customer. Acceptance of any delivery or performance by or on behalf of the Customer shall in any event be conclusive evidence of the Customer’s acceptance of these conditions.

2.3. Each Contract supersedes all previous oral or written communications between the Company and the Customer not expressly referred to in any written acknowledgement by the Company of the Customer’s order and the Company does not authorise the giving of representations on its behalf by any persons unless confirmed on writing and signed by the Company’s Country Manager.

2.4. No amendment of any Contract or these conditions shall bind the Company unless in writing and signed by the Company’s Country Manager.

2.5. No Contract shall constitute a sale by sample notwithstanding that any products may have been exhibited to or inspected by the Customer.

3. Prices

3.1. The Company’s prices exclude VAT where applicable and all other taxes or duties of whatsoever kind and unless otherwise agreed in writing by the Company are ex the Company’s works exclusive of packaging, carriage, insurance and delivery.

4. Payment

4.1. All amounts due to the Company under the Contract, unless otherwise agreed in writing by the Company, shall be payable in full in pounds sterling by the end of the month following the date of the invoice without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law)

4.2. In addition to any other rights of the Company, if the Company’s invoice is not paid in full in cleared funds when due:

- 4.2.1. interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) calculated on a daily basis at the rate of 4% over the base rate from time to time quoted by the Company's bankers or, if greater, as determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.2.2. all other invoices, whether or not they are due for payment, shall become immediately due and payable; and
- 4.2.3. the Company reserves the right to apply amounts received first in settlement of interest on overdue debts and then of debts due beginning with the oldest.

The Customer shall also pay all legal and other costs incurred by the Company in recovering any amounts owing from the Customer and any Goods in which title has been retained by the Company and such costs shall be due for payment immediately on invoice.

- 4.3. The Company shall have the right at its discretion and without being required to give any reason, notwithstanding any agreement or arrangement with the customer or any contract which the customer may have with a third party, without liability to the customer, at any time, to exercise any one or more of the following rights, namely to:
 - 4.3.1. withdraw or limit the amount of any credit granted to the Customer;
 - 4.3.2. require the price or charge for any Goods be paid in advance; and
 - 4.3.3. refrain from their delivery or performance until the price or charge has been so paid.

5. Delivery, Risk and Performance

- 5.1. Unless otherwise agreed in writing by the Company Goods shall be delivered and risk in them shall pass to the Customer when they are made available to the Customer at the Company's works or other delivery point agreed in writing by the Company.
- 5.2. Where Goods are made available at a point other than the Company's premises, delivery shall, unless otherwise agreed in writing by the Company be made by articulated lorry and the Customer shall be responsible for all off-loading.
- 5.3. The Company will endeavour to comply with any date for delivery proposed or confirmed by it but shall not be liable for any loss, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or repudiate the Contract.
- 5.4. If the Company is unable to deliver:
 - 5.4.1. as a result of incorrect instructions given to the Company by the Customer;
 - 5.4.2. because no one is available to unload the Goods within one hour of the delivery vehicle arriving at the delivery point;
 - 5.4.3. because in the Company's delivery driver's absolute discretion he considers the road leading to the delivery point to be unsuitable for the delivery vehicle; or
 - 5.4.4. because in the Company's delivery driver's absolute discretion, he considers the Customer's unloading equipment to be unsafe or unsuitable for off-loading the Goods from the delivery vehicle;the delivery driver shall leave a calling card notifying the Customer that the Goods have been returned to the Company's depot, in which case, the Customer should contact the Company to arrange for the Customer to collect the Goods from the Company's depot.
- 5.5. If the Customer fails to take delivery of any Goods when tendered the Company at its discretion may exercise any or all of the following rights namely to:
 - 5.5.1. store the Goods at the risk of the Customer and the Customer acknowledges that, given the nature of the Goods, they may deteriorate whilst in storage. If the Goods do so deteriorate the Company shall be

- entitled, without liability to the Customer, to dispose of the Goods at the Customer's cost and expense;
- 5.5.2. require the Customer to pay all storage, transportation, handling or other charges (including expenses in connection with the delay or detention of vehicles and expenses incurred by the Company if, in its absolute discretion, it takes steps to maintain the Goods whilst in storage) incurred by the Company as a result of such failure; and
- 5.5.3. require the Customer to pay for the Goods as though delivery or performance had been completed.
- 5.6. The Company may deliver the Goods by instalments each of which shall be deemed to be the subject of a separate contract and, unless otherwise agreed in writing, no failure by the Company in any one or more instalments shall entitle the Customer to repudiate any Contract for Goods previously delivered or to refuse to accept any undelivered Goods.

6. Title

- 6.1. Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and not pass to the Customer (who shall, nevertheless, subject to the conditions stated below, be entitled to resell them as principal only, and to use them in the ordinary course of business) until the Company has received in cash or cleared funds payment in full of the price of the Goods and of all other debts for any other goods or services owed to it by the Customer on any account.
- 6.2. Until title passes the Company shall be entitled at any time on demand to:
- 6.2.1. repossess and sell all or any of the Goods and thereby terminate (without any liability to the Customer) the Customer's right to use and sell them; and
- 6.2.2. enter any premises where the Goods are located for the purpose of inspecting or repossessing them.
- 6.3. The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Customer.
- 6.4. The Company transfers to the Customer only such title and rights of use as the Company has in any Goods and in the case of items provided by any third party shall transfer only such title and rights as that party has and has transferred to the Company.

7. Shortages, Lost or Damaged Goods

- 7.1. If on delivery any Goods are missing, lost or damaged the Company will at its own expense make good the discrepancy within a reasonable period by replacement in its discretion, or, at its option, allowing credit for their invoice value.
- 7.2. The Customer shall have no claim for shortages, loss or damage in transit unless that Customer notified the Company in writing of such claim within 5 days of delivery, or in the case of non-delivery, within 7 days of receipt of the invoice.;

8. Defects and quality

- 8.1. The Company warrants that on delivery the Goods will conform in all material respects with the Specification.
- 8.2. All the Company's Goods are offered on the basis that the Customer has taken all reasonable measures to confirm their suitability for the Customer's own particular purpose.
- 8.3. Except as expressly provided in these conditions or as otherwise specified or agreed in writing by the Company the Company accepts no liability, express or implied, for any life or wear of any Goods or for the quality or suitability for any particular purpose or use under specific conditions (whether or not known to the Company) of any Goods.
- 8.4. The Company shall have no liability for:

- 8.4.1. any Goods which have been installed, used, maintained, adjusted or stored otherwise than by the Company or in accordance with its recommendations (or the recommendations of any supplier of any item with which the Goods are used) or have suffered any misuse, neglect or accident;
 - 8.4.2. any Goods which have been modified or interfered with in any way or in or with regard to which any part not of the Company's supply has been used without the Company's prior written approval or the Customer has failed to carry out any modification or improvement recommended by the Company;
 - 8.4.3. any costs (including labour) of removing any Goods forming the subject of any claim which has been accepted by the Company or the refitting of any repaired or replacement items or any taxes, duties or similar charges payable in connection with the transportation to the Customer of any replacement parts;
 - 8.4.4. any discrepancy which results from any design, specification, advice, information, details or materials (including "free-issue" items) supplied by or on behalf of the Customer; or
 - 8.4.5. any consumable parts or items.
- 8.5. The Company shall not be liable for a breach of the warranty in condition 8.1 unless:
- 8.5.1. the Customer gives written notice of the defect immediately upon it becoming apparent and in any event within 21 working days after delivery;
 - 8.5.2. all monies due from the Customer have been paid in full; and
 - 8.5.3. the Company is given a reasonable opportunity and facilities for the investigation of any claim
- 8.6. Subject to conditions 8.4 and 8.5, if any of the Goods do not conform with the warranty in condition 8.1 the Company shall, at its option, at its own expense replace such Goods or refund the price of the Goods.
- 8.7. If the Company complies with condition 8.6 it shall have no further liability for a breach of the warranty in condition 8.1 in respect of such Goods.
- 8.8. These conditions shall apply to any replacement Goods supplied by the Company and all time periods referred to in this condition 8 shall, in respect of the replacement Goods, run from the date of delivery of the replacement Goods.

9. Technical Information and Advice

- 9.1. Where the Company supplies any information, opinion, recommendation or advice ("Information") the Customer must check its suitability for the particular application for which any Goods are intended and the Company accepts no liability whatsoever for any loss, damage or expense arising from the use of any Information. Without prejudice to the generality of the foregoing the Company shall not be liable for the consequences of any incorrect use of any goods or poor workmanship on the part of the Customer or user.
- 9.2. Any performance figures given by the Company are based on experience, trials, or testing but unless expressly agreed in writing by the Company no liability is accepted if such performance figures are not achieved.

10. Extent of Liability

- 10.1. Except as provided in condition 8, subject to condition 10.2:
 - 10.1.1. the Company shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with any contract for the supply of Goods; and
 - 10.1.2. in particular, the Company shall in no circumstances have any liability for:

- 10.1.2.1. any economic loss (whether direct or indirect), including but not limited to wasted time or expenditure, loss of profits, production, business revenue or goodwill; and
 - 10.1.2.2. any indirect, special or consequential loss damage, costs or expenses.
- 10.2. Nothing in these conditions shall operate so as to exclude the Company's liability for:
 - 10.2.1. death or personal injury resulting from its negligence or the negligence of its employees whilst acting in the course of their employment;
 - 10.2.2. fraud or fraudulent misrepresentation on the part of the Company or any of its employees whilst acting in the course of their employment; or
 - 10.2.3. any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 10.3. Any claim by the Customer or acceptance of liability by the Company in respect of any particular Goods shall not entitle the Customer to reject or refuse to pay for any other Goods comprised in the Contract or any other contract between the Company and the Customer.
- 10.4. Subject to condition 10.2 the Customer shall indemnify the Company against any claim in respect of the Goods by any third party.
- 10.5. The Customer shall be responsible for and shall indemnify and hold harmless the Company against any and all claims, proceedings, costs, damages, liabilities and expenses incurred or suffered by the Company arising from any instructions, data, drawings, specifications, tooling, equipment, materials (including "free-issue" items), services or other items supplied by or on behalf of the Customer to the Company or from any failure to supply the same or any inaccuracy, insufficiency or default in them or from any infringement or alleged infringement of the rights of any third party resulting from the Company's use of any of the foregoing items.

11. Cancellation

The acceptance of any request by the by the Customer to cancel a Contract shall be at the Company's discretion and take effect only when written confirmation of such acceptance has been given by the Company.

12. Termination or Suspension

- 12.1. The Company may at its discretion and without liability to the Customer suspend its performance or (whether or not performance has been previously suspended) terminate the Contract by notice in writing where:
 - 12.1.1. the Customer fails to make any payment when or as due or otherwise defaults in any of its obligations under the Contract or any other contract for the supply of goods or services between the Company and the Customer;
 - 12.1.2. is unable to pay its debts in the ordinary course of business, has a receiver, manager, administrator, administrative receiver or trustee in bankruptcy (as the case may be) appointed for all or any part of its undertaking, assets or income;
 - 12.1.3. has a resolution passed or a petition presented to any court for its winding up (compulsorily or voluntarily);
 - 12.1.4. enters into a composition or arrangement with its creditors (whether formal or informal);
 - 12.1.5. has any distraint or execution levied on any of its assets;
 - 12.1.6. suffers any similar to any of the foregoing in any jurisdiction;
 - 12.1.7. ceases to trade; or
 - 12.1.8. the Company bona fide believes that any of the forgoing matters may occur.

13. General

- 13.1. The Company may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Customer without the Company's prior written consent.
- 13.2. The Customer shall treat the Contract and all information which it acquires thereunder which might reasonably be considered to be confidential as confidential.
- 13.3. Neither party shall be liable to the other for any delay or other failure to perform any of its obligations under the Contract resulting from any cause whatsoever beyond its reasonable control and the party concerned shall be entitled to an extension of time for performance by the period of any such delay.
- 13.4. Each right or remedy of the Company is without prejudice to any other right or remedy of the Company whether under the Contract or otherwise.
- 13.5. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 13.6. No right is granted to any third party to enforce any rights relating to the Contract.
- 13.7. If any provision or part-provision of the Contract is or becomes invalid or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted. Such invalidity or unenforceability shall not affect the validity and enforceability of the rest of the Contract.
- 13.8. No failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will be construed as a waiver of its rights under the Contract.

14. Notices

Any notice to be given to either party shall be in writing and (i) if sent by first class pre-paid post to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given on the second working day following the date of posting or (ii) if sent by fax or email shall be deemed to have been given on the date of the fax or email provided that a hard copy of the notice is sent on the same day by pre-paid first class post (except that if sent on a non-working day or after 5pm on any working day shall be deemed received on the next working day).

15. Law and Jurisdiction

The Contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts.

Mobilane (UK) Limited

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