

## TERMS AND CONDITIONS OF SALE

1. These Conditions apply to and form part of the contract between Forestart Limited ("Supplier") and you, the "Customer". They supersede any previously issued terms and conditions of purchase or supply. No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
2. Each Order shall be an offer to purchase the Goods subject to the Contract.
3. The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of the Supplier's written acceptance of the Order or the Supplier dispatching the Goods. Written acceptance of an Order shall not constitute confirmation of supply.
4. Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
5. Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract. The Customer shall not be entitled to rely on any information or guidance provided by the Supplier in respect of its Goods and/or services (including, but not limited to, the germination or success rates of those Goods or services). All information and guidance is provided by the Supplier in good faith for illustrative purposes only and shall not form part of the Contract nor provide any guarantee or warranty as to the quality of any Goods.
6. The price for the Goods shall be as set out in the Order or, where no such provision is set out, shall be as advised by the Supplier from time to time before the date the Order is placed ("Price"). Prices are wholesale ex-warehouse (unless otherwise stated) and are subject to amendment by the Supplier without notice. Prices are exclusive of VAT (which will be charged at the current rate) and packaging, delivery, insurance and all other related charges or taxes, which will be charged at the Supplier's current rate.
7. All Goods are offered 'subject to availability'. Unless agreed with the Supplier in advance and in writing, Orders will be fulfilled in rotation and no guarantee of completion by a fixed date will be given. The Goods shall be delivered by the Supplier, or its nominated carrier, to the location specified in the Order ("Location"). Time shall not be of the essence for delivery of the Goods. Stratified seed will be dispatched upon successful completion of the stratification process for spring planting. The Goods shall be deemed delivered on arrival of the Goods at the Location. The Supplier may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment. The Supplier shall not be liable for any delay in or failure of delivery caused by a Force Majeure Event.
8. The Supplier shall invoice the Customer for the Goods, partially or in full, at any time following acceptance of the Order. The Customer shall pay all invoices in full without deduction or set-off in cleared funds, to the bank account nominated by the Supplier, within 30 days of the date of each invoice and, in any event, before Goods are dispatched. Goods may be held by the Supplier for up to 21 days pending payment. Time for payment is of the essence. Customers requiring a credit arrangement must provide two trade references and the Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
9. Where sums due under these Conditions are not paid in full by the due date, the Supplier may (without limiting its other rights) charge interest on such sums at 4% a year above the Bank of England's base rate from time to time in force, and interest shall accrue on a daily basis and shall apply from the due date for payment until actual payment in full (whether before or after judgment).
10. The Supplier may terminate the Contract at any time and for whatever reason by giving not less than **one weeks** notice in writing to the Customer. Furthermore, the Supplier may terminate the Contract forthwith (by giving notice to the Customer) at any time if the Customer commits a material breach of the Contract and such breach is not remedied with **seven days** (or is not remediable) or the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid.
11. Risk in the Goods shall pass to the Customer on delivery. Goods shall remain the property of Forestart Ltd and title in Goods shall not pass until payment for them has been discharged in full and cleared funds notwithstanding that the Goods may have been delivered to the Customer. Until title to the Goods has passed to the Customer, the Customer shall: (i) hold the Goods as bailee for the Supplier; (ii) store the Goods separately from others and ensure are clearly identifiable as belonging to the Supplier; (iii) take all reasonable care of the Goods and keep them in the condition in which they were delivered; (iv) insure the Goods from the date of delivery with a reputable insurer against all risks for an amount at least equal to their Price; (v) inform the Supplier immediately if it becomes subject to any insolvency events or circumstances which might reasonably result in the Customer becoming insolvent; and (vi) permit the Supplier to inspect the Goods on reasonable notice and at all reasonable times and provide the Supplier with such information concerning the Goods as the Supplier may from time to time request.
12. Orders, once placed, may only be cancelled by the Customer with the Supplier's written consent.
13. No Goods shall be returned without the Supplier's prior written consent and no returns will be considered unless they are in the original, unopened packaging of the Supplier. Should an unfulfilled Order be cancelled by the Customer, the Supplier reserves the right to demand payment of 30% of the Price from the Customer as liquidated damages, without having to prove its action.
14. Whilst the Supplier believes that all Goods are supplied in good condition and are of reliable quality, it shall not be responsible for the replacement of any Goods which fail to perform as they should (e.g. to grow) due to unsuitable soil conditions, adverse weather, damage, neglect or any other cause beyond the Supplier's control.
15. All Goods must be carefully examined on delivery and any complaint notified to the Supplier within two days of delivery and confirmed in writing within seven days. The Supplier may (at its discretion) offer refunds in respect of a complaint, provided that the Goods are returned to the Supplier in their original, unopened packaging. Failure to comply with this Condition will render any complaint void.
16. No Intellectual Property Rights are transferred or licensed as a result of the Contract and all Intellectual Property Rights are and shall remain the exclusive property of the Supplier (or, where applicable, the third party licensor from whom the Supplier derives the right to use them).
17. Where Goods consist (either in full or in part) of any reproductive material (including, but not limited to, plant cuttings and seeds), the Customer hereby warrants and undertakes that it shall not use those Goods to create any further material. For the avoidance of doubt, this includes the production of further cuttings and/or collection of any genetic material from the Goods for reproduction or propagation purposes.
18. The Supplier shall not be liable for any consequential, indirect or special losses nor for any loss of profit, loss of use, loss of production, loss of contract, loss of opportunity, loss of goodwill or harm to reputation. In all cases, the Supplier's total liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be limited to replacement seed or a credit note to the value of the seed supplied. The Customer acknowledges and accepts that there is always a risk that Goods (including seeds) may carry spores of pathogenic fungus species (such as Fusarium and Sirococcus) and the Supplier shall not be responsible for any losses arising from or in connection with any contamination by Goods supplied.
19. The Supplier shall have no liability under or be deemed to be in breach of the Contract for any delays or failures in its performance of the Contract which result from the occurrence of a Force Majeure Event provided that it shall promptly notify the Customer in writing when such the event causes a delay or failure in performance and when it ceases to do so.
20. The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
21. The Customer shall forever keep confidential all of the Supplier's Confidential Information (including in respect of any Intellectual Property Rights) and shall only use the same as required to perform the Contract (save in respect of any confidential information which is or comes into the public domain (other than as a consequence of any breach of the Contract or any related agreement) or any disclosure which the customer is required by law or a regulatory authority).
22. All disputes or questions between the Supplier and the Customer with respect to any matter or thing arising out of or relating to the Contract shall, after written notice by one party to the other, be referred to a single arbitrator agreed for the purpose or, in default of such agreement, to be appointed to the President for the time being of the Horticulture Trades Association. This Condition shall be deemed to be a reference to 'Arbitration' within the meaning of the Arbitration Act 1950 or any statutory notification thereof for the time being in force.
23. The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales. Subject to the provisions of Condition 21, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).
24. The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.
25. Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.
26. The rights and remedies provided in the Contract for the Supplier are cumulative and not exclusive of any rights and remedies provided by law.
27. The parties agree that the Contract constitutes the entire agreement (and supersedes all previous agreements, understandings and arrangements) between them, whether in writing or oral, in respect of its subject matter. The Customer acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract. Nothing in these Conditions purports to limit or exclude any liability for fraud, death or personal injury caused by negligence, or any other losses which cannot be excluded or limited by operation of English law.
28. No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.
29. The parties are independent and not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it.
30. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
31. No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
32. No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
33. The Customer shall comply with all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national, and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
34. A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
35. In these Conditions:  
"Confidential Information" means any commercial, financial or technical information, information relating to the Goods or any Intellectual Property Rights, know-how or trade secrets of the Supplier which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;  
"Contract" means the agreement between the Supplier and the Customer for the sale and purchase of the Goods, incorporating these Conditions and the Order;  
"Force Majeure Event" means an event or sequence of events beyond the Supplier's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, epidemic/pandemic, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption/failure of supplies of power, fuel, water, transport, equipment or telecommunications service required for performance of the Contract, and government order;  
"Goods" means the goods set out in the Order to be supplied by the Supplier to the Customer in accordance with the Contract;  
"Intellectual Property Rights" means the copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property (or similar) rights of the Supplier (or, in respect of any of the same held by a third party and licensed to the Supplier for its use, of that third party), in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; (v) to which the relevant party is or may be entitled; and (vi) in whichever part of the world existing; "Order" means an order for the Goods from the Supplier placed by the Customer in such form as may be required by the Supplier from time to time.