



## Terms and Conditions

[Trade terms and Conditions](#)   [Consumer terms and Conditions](#)   [Guarantee Conditions](#)   [Customer Reviews](#)

### 1. THESE TERMS APPLY

- 1.1. These terms and conditions ("conditions") shall be incorporated in all contracts for the supply of goods and/or services ("supplies") by The Tomato Plant Company Ltd ("us", "we" or "our"). Our full details appear at the end of these conditions.
- 1.2. Unless expressly agreed in writing (signed by one of our directors) between us and the party or parties with whom the contract is made ("you" or "your"), these conditions shall apply to the exclusion of any other terms and conditions, including any referred to by you. The taking of delivery of supplies, or acceptance of performance of the supplies, shall be conclusive evidence of your acceptance of these conditions. For the avoidance of doubt, our acceptance of any purchase order you issue does not extend to acceptance of any conditions referred to on that purchase order.

### 2. AUTHORITY

- 2.1. You shall notify us immediately:
  - 2.1.1. If any of your employees (or former employees) cease to have authority to bind you; or
  - 2.1.2. of any changes to such authority.

In the absence of any such notifications, we shall be entitled to rely and act on the orders and instructions of such employees or former employees as if they were made or given by you.

### 3. CHARGES

- 3.1. Our charges for supplies exclude VAT and all other taxes or duties, unless otherwise stated in writing.
- 3.2. We reserve the right to vary our charges for supplies at any time prior to delivery or performance of supplies. Any quotation we give is an estimate only of our charges for supplies and shall not be binding unless expressed otherwise on the quotation.
- 3.3. We reserve the right, even when not expressly provided for, to charge for parking, tolls, congestion charges, emission charges and any other related expenses required in order to carry out the Service.

### 4. PAYMENT AND CREDIT TERMS

- 4.1. Unless our invoice expressly states otherwise, all payments shall be due to us on the date of invoice. Payments shall be made in cleared funds without any discount, set-off or other deduction or reduction whatsoever.
- 4.2. Time of payment is of the essence and, in addition to any of our other rights, if an invoice is not paid in accordance with condition 4.1 above then:
  - 4.2.1. interest shall be payable on any overdue amount from the date on which payment was due to the date on which it is made (whether before or after judgement), calculated on a daily basis at the annual rate of twelve (12) per cent compounded monthly; and
  - 4.2.2. an additional administration charge at the rate we publish from time to time shall be payable in respect of the invoice; and
  - 4.2.3. all other invoices, whether or not they are due for payment, shall become immediately due and payable.
- 4.3. We reserve the right to apply payments received from you:
  - 4.3.1. first in settlement of any interest on overdue debts; then
  - 4.3.2. on debts due, beginning with the oldest.
- 4.4. You shall pay, on an indemnity basis, all legal and other costs that we incur in recovering:
  - 4.4.1. any amounts owing from you; and

- 4.4.2. any goods in which ownership has been retained by us and such costs shall be due for payment immediately on presentation of our invoice.
- 4.5. We shall have the right, entirely at our discretion and notwithstanding any agreement or arrangement with you or any contract which you may have with a third party, without liability to you, at any time to:
  - 4.5.1. withdraw, reduce or otherwise limit the amount of credit granted to you (and, for the avoidance of doubt, we shall have no obligation or liability to make supplies to you where to do so will cause the amount of credit we have granted you to be exceeded); and/or
  - 4.5.2. require the price or charge for any supplies to be paid in advance; and/or
  - 4.5.3. refrain from the delivery or performance of supplies until the price or charge for the supplies has been paid.
- 4.6. In the event that we, in our reasonable opinion, consider that you:
  - 4.6.1. have or are threatening to cease trading;
  - 4.6.2. have or are threatening to become insolvent;
  - 4.6.3. are otherwise unable to pay your debts, then upon our written notification to you, all invoices, whether or not they are otherwise due for payment, shall immediately become due and payable.
- 4.7. If you dispute all or any part of an invoice, then you must:
  - 4.7.1. inform us in writing within five days of the due date for payment of the amount that is disputed and the reasons for the dispute, as well as provide us with all documentation and other information that we will require in order to enable us to consider your claim; and
  - 4.7.2. pay any undisputed amounts or invoices in accordance with clause 4.1

Failing which you will not be entitled to dispute the invoice or any part of it.

## **5. DELIVERY AND PERFORMANCE**

- 5.1. If you fail to take delivery of any goods that have been specifically ordered for you (or to collect them when notified they are ready for collection) then we may, at our absolute discretion, do any of the following:
  - 5.1.1. store the goods at your risk; or
  - 5.1.2. require you to pay all storage, transportation, handling or other charges incurred by us as a result of such failure; or
  - 5.1.3. require you to pay for the goods as though delivery had taken place.
- 5.2. We will make reasonable efforts to meet any dates or times for delivery or performance requested by you but:
  - 5.2.1. we shall not be liable for any loss, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever; and
  - 5.2.2. any such delay or failure to perform shall not entitle you to refuse to accept any delivery or performance or to repudiate any contract.

## **6. TITLE AND RISK**

- 6.1. Whether or not risk in goods has passed to you, ownership in goods supplied to you shall remain with us until we have received in cash or cleared funds payment in full of the price of the goods (including, in every case, any charges incurred in accordance with clauses 4 and 5 of these conditions).
- 6.2. Whether or not risk in goods has passed to you, ownership in goods supplied to you shall remain with us until we have received in cash or cleared funds payment in full for all other goods and services supplied by us to you (including, in every case, any charges incurred in accordance with clauses 4 and 5 of these conditions).
- 6.3. Until ownership in goods has passed to you:
  - 6.3.1. you shall hold the goods as bailee for us and ensure that the goods are at all times clearly identified as our property;
  - 6.3.2. we shall be entitled at any time on demand to:
    - 6.3.2.1. repossess, remove from other equipment or property (without being liable for any damage caused by such removal) and sell or otherwise dispose of all or any of the goods and thereby bring to an end (without any liability to you), your right to use, sell or otherwise treat the goods as your own; and

- 6.3.2.2. enter any premises where the goods are, or are likely to be, located for the purpose of inspecting or repossessing them.
- 6.4. We shall, without prejudice to any other remedy we may have, be entitled to maintain an action for the price of the goods notwithstanding that ownership in them has not passed to you.
- 6.5. We shall transfer to you only such ownership and rights of use as we have in any goods and in the case of items provided by any third party, shall transfer only such ownership and rights as that party had and has transferred to us.
- 6.6. Risk of damage or loss in any goods shall pass to you immediately upon your taking delivery of the goods. In this clause "delivery" means the earlier of:
- 6.6.1. actual delivery of the goods to you, your premises or any other place where delivery is directed;
- 6.6.2. where we store or hold goods on your behalf (for whatever period), when we identify the goods as being no longer available for resale to a third party or when the goods are separated from our stock (whichever is the earlier);
- 6.6.3. the fitting onto or incorporation of the goods into property belonging to you or a third party;
- 6.6.4. the despatch to you of an invoice relating to the goods.
- 6.7. Unless otherwise agreed in writing, where we have supplied or fitted goods then the item or items which such goods replace shall become our property on removal.

## **7. WARRANTY**

- 7.1. In respect of goods that we supply, we shall (to the extent that we are able to do so), assign to you the benefit of any manufacturer's warranty applying to the goods and shall, at your request supply the details of any such manufacturer's warranty.
- 7.2. To the extent permitted by law, all other warranties in respect of supplies (including, but without limitation, fitness for any particular purpose), whether express or implied, are excluded.

## **8. CLAIMS**

- 8.1. We shall have no liability in respect of any claim by you under these conditions in connection with any supplies unless:
- 8.1.1. when the claim is made you produce our official receipt given to you at the time the supplies were originally made; and
- 8.1.2. you have afforded us a reasonable opportunity and facilities for the investigation of any claim and the making good of any discrepancy and, if we request, the collection or return of goods (but no goods may be returned to us without our prior written authorisation); and
- 8.1.3. the opportunity for us to investigate any claim is given (in the case of any discrepancy which is reasonably apparent on inspection) within not less than three (3) days from the date on which notice of the claim is given and, in the case of any goods, in any event before they are used or re-sold.
- 8.2. Where a claim is accepted in whole or in part, any replaced items shall belong to us and may be disposed of only in accordance with our instructions.

## **9. EXTENT OF LIABILITY**

- 9.1. Except to the extent stated in these conditions or otherwise agreed in writing by us:
- 9.1.1. we 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 supplies other than for:
- 9.1.1.1. death or personal injury resulting from our negligence (as defined by the Unfair Contract Terms Act 1977, section 1); or
- 9.1.1.2. for proven fraud on the part of our employees whilst acting in the course of their employment with us; and
- 9.1.2. we shall have no liability for any consequential or indirect loss or damage suffered, directly or indirectly, by you under or in connection with any contract for supplies, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against you by any third party.
- 9.2. Our liability under or in connection with any contract for supplies shall in no circumstances exceed the charge for the supplies in respect of which the liability arises.

- 9.3. We shall be discharged of all liability to which these conditions apply unless (without extending statutory limitation) proceedings are commenced within twelve (12) months after you become aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 9.4. Nothing in clauses 9.1 to 9.3 shall affect your liability to pay the charges or any other sums falling due to us under any contract.
- 9.5. You shall indemnify and keep us indemnified against all and any liability (without limitation) that we may have to your insurers or other third parties arising in connection with any contract for supplies and our performance of any contract for supplies.
- 9.6. The term "in connection with any contract for supplies" includes any performance or contemplated performance of the contract.

## **10. TECHNICAL INFORMATION AND ADVICE**

- 10.1. You undertake to comply with such instructions as may be issued by us, the manufacturer or our supplier concerning the use, precautions and other measures to be taken in respect of goods or services that we supply.
- 10.2. We shall not be liable for the consequences of any incorrect use of any goods or poor workmanship on your part or on the part of the user or any failure by you or the user to comply with:
  - 10.2.1. our or any manufacturer or other supplier's instructions or recalls; or
  - 10.2.2. any law or regulation concerning the use of goods; or
  - 10.2.3. any standard, industry or other generally accepted practice.

## **11. SUSPENSION AND TERMINATION**

- 11.1. If you fail to make any payment when and as due or otherwise default on any of your obligations under any contract for supplies or any other agreement between you and us, we shall, without prejudice to any other remedy, be entitled, at our discretion, without liability to you, to suspend our performance of the contract or to terminate it (whether or not performance has previously been suspended).

## **12. FORCE MAJEURE**

- 12.1. We shall not be liable for any delay or failure to perform the whole or any part of any contract resulting from any cause whatsoever beyond our reasonable control existing at the date of the contract or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, or the supply of labour, materials or power, lack or shortage of stock or goods, adverse weather, traffic congestion or disruption, strike, lockout or labour dispute, illness or restriction of any authority or governmental agency (of whatever nature) and the time for performance shall be extended by the period of any such delay.

## **13. YOUR OBLIGATIONS**

- 13.1. You shall not:
  - 13.1.1. alter, remove or vary in any way any numbers or other distinguishing marks on any goods supplied or fitted by us;
  - 13.1.2. carry out on any goods supplied or fitted by us any modification other than those (if any) expressly authorised by us;
  - 13.1.3. re-sell any goods supplied by us which have been altered and modified contrary to clauses 13.1.1 and 13.1.2.
- 13.2. You undertake not to re-sell or supply any goods supplied by us except on terms which incorporate conditions 10.1, 13.1 and 14.4 so that any purchaser of such goods is effectively bound by those conditions.

## **14. GENERAL**

- 14.1. Goods supplied by us are the subject of continuous programmes of development and improvement and we reserve the right to alter their specifications at any time without notice and to deliver goods conforming to the altered specification in fulfillment of any contract; no contract shall constitute a sale by sample notwithstanding that any products may have been exhibited to or inspected by you or your agents. We also reserve the right at any time to update any information that we provide, without notice.
- 14.2. We may at our discretion sub-contract all or any of our obligations under any contract, but the contract shall not be assigned by you without our prior written consent.
- 14.3. The acceptance of cancellation of any contract requested by you shall be at the company's discretion and take effect only when written confirmation of such acceptance has been given by us.
- 14.4. You shall not use or reproduce in whole or in part any of our or our associated companies' trade marks, business or product names, logos or the like or our advertising, promotional or other material (whether over the internet or

otherwise) without first obtaining our written consent and if we, in our discretion, withdraw such consent, you shall immediately cease to use the material in question.

- 14.5. You authorise us, and any finance company used to purchase any goods, to carry out enquiries (including enquiries relating to directors and other individuals) with credit reference agencies and to disclose such information to one another. You further acknowledge that the agencies concerned may keep and share the information supplied to them with other businesses in assessing applications for credit and/or fraud prevention.
- 14.6. No right is granted to any third party to enforce any rights relating to the supplies.
- 14.7. Where a manufacturer or supplier of any goods supplied by us so stipulates, then any contract for the sale of such goods by us to you shall also contain such terms as the manufacturer or supplier of such goods may require. Details of any such terms will be supplied to you on request and you shall be deemed to have had notice of such terms whether or not you had actually inspected the same.
- 14.8. Where you deposit your own goods with us, whether for repair or otherwise, then in the event of your failing to collect those goods and meet all sums (if any) due to us and arising within two months of the date on which the said goods are available for collection then we shall have the right to dispose of the goods in the open market and to recover the proceeds of any such disposal all or any sums due to us from you howsoever arising and in the event that the proceeds of the disposal exceed any such sums due we shall be accountable to you for such excess for a further period of two months from the date of the disposal in question but thereafter you shall have no claim against us, whether in respect of the goods themselves or the proceeds of any disposal.

## **15. LAW, JURISDICTION AND CONSTRUCTION**

- 15.1. The contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to and arising from the contract.
- 15.2. The headings if conditions are for convenience of reference only and shall not affect their interpretation.

## **16. NOTICES**

- 16.1. Any notice to be given to either party shall be in writing and if sent by facsimile or electronic mail or forwarded by prepaid first-class 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 date of the facsimile or electronic mail transmission (if a copy is sent the same day by post), or two working days following the date of posting.

## **17. HIRE OF EQUIPMENT**

- 17.1. Any equipment hired from The Tomato Plant company Ltd is hired under CPA terms and conditions.