

Terms and Conditions of Business  
Of  
**Direct Garden Supplies Limited**

**1. Contract basis**

Any goods or services we supply to you are subject to these (and only these) Terms and Conditions. They form part of the contract between us. They cannot be altered or other terms replace them except where one of our Directors agrees to that in writing. Please read them carefully. If you are not sure what they mean, please contact us before you place any order with us.

**2. Definitions**

In these Conditions when we use the word(s):

- 'You' and 'your' we mean you, the customer
- 'We', 'our' and 'us' we mean us, Direct Garden Supplies Limited, and that includes our employees, agents and subcontractors

**3. Opening and Closing an account with us**

(a) We normally supply goods to customers on a pro-forma invoice basis. If you apply to open an account with us we reserve the right to decline that application without having to give you a reason. If we agree to open an account we reserve the right to attach special conditions to your account with us.

(b) We reserve the right to close any existing account with us without giving you any reason

**4. Ordering and receiving/collecting goods from us**

(a) Goods advertised by us in whatever medium (including descriptions or technical specifications) are for guidance only

(b) Goods can be ordered on the basis of availability and the list prices advertised by us plus VAT plus delivery charges where applicable. We reserve the right to decide how the goods will be delivered (i.e. whether palletized, boxed or loose) and to subcontract the delivery. Alternatively, and only by prior arrangement with us, you can collect goods from our premises between 9.00a.m and 1p.m. Monday to Friday

(c) We can increase the price of the goods between the date you order them and the date they are delivered or collected if any of our costs have increased in the interim

however we will tell you what that increased price is before delivery/collection and you will have the option to refuse to pay the increase in which case your order will be automatically cancelled

(d) Risk in the goods will pass to you when we arrive at the delivery address to make delivery or attempt to make delivery to you or when you arrive at our premises to collect goods from us

(e) The arranged date and time for delivery by us is an estimate only. We reserve the right to change the date or time of delivery without prior notice and without being liable to you in any way for delayed delivery. Date and time of delivery shall not be of the essence of the contract

(f) On delivery you will sign to acknowledge receipt of the goods and such signature will be conclusive evidence that the quantity and description of the goods is the same as your order

## **5. Refused deliveries and Returns**

(a) If, at the time of delivery or attempted delivery or within 7 days of actual delivery, you reject the goods or part of any goods because you are of the opinion they are defective in some way or do not match your order ('the returned goods') then you will, at your cost, send the returned goods to us for examination or testing.

(b) If on examination the returned goods are found to match your order then at our discretion we will either:

- Send the returned goods back to you, charge you for the return carriage costs and charge you for the returned goods OR
- Keep the returned goods and charge you a re-stocking fee equivalent to 10% of the invoiced value of the returned goods

(c) If on examination or testing the returned goods are found not to be defective then we will send the returned goods back to you, charge you for the return carriage costs and charge you for the returned goods

(d) If on examination or testing the returned goods are found to be defective or do not match your order we will accept the returned goods and credit you with both the return carriage costs and the invoiced value of the goods

(e) If, by prior arrangement and at our sole discretion, we agree to the return of the goods or part of any goods in circumstances other than in (a) – (d) above, then the goods must be unused, in the same condition and packaging as when they were dispatched or collected and you agree to pay the cost of returning the goods plus a re-stocking charge of 10% of the invoiced value of the goods

(f) You agree not to cancel any order for the goods where the goods are to be delivered in separate lots and we fail to deliver any individual lot

## **6. Warranty on goods**

(a) The warranty on our own branded goods is 2 years from the date of delivery or collection. Our warranty is, at our option, to repair or replace defective goods due solely to faulty design, materials or workmanship. Goods alleged to be defective must be reported to us in writing as soon as the defect becomes apparent or would have been apparent on reasonable inspection

(b) The warranty on goods other than our own branded goods is the manufacturer's warranty and you need to make yourself aware of the extent and terms and conditions of such warranty before you order such goods

## **7. Payment for goods**

(a) You will immediately pay us for the goods as supplied to you. If you have a credit account with us then you will pay us for the goods as invoiced to you within 10 calendar days from the date of invoice in cleared funds without any deduction or set-off and the date of payment shall be of the essence of the contract

(b) If you fail to pay us on the due date then we can do any or all of the following:

- charge you interest at the rate set from time to time by the Late Payment of Commercial Debts Interest Act 1998 and any regulations made under that Act
- charge you any bank charges we incur for any cheque not honoured when presented
- charge you any costs we incur in collecting the money you owe us whether those costs involve our administrative time, legal costs or debt collection agency costs
- cancel the contract between us and recover the goods as delivered or collected
- charge you compensation for breach of contract
- suspend or close your account with us

## **8. Ownership and retention of title**

(a) Unless and until we receive cleared funds from you then ownership of the goods will not pass to you in spite of delivery or collection having been completed

(b) You agree to keep separate and identifiable any goods delivered or collected which have not been paid for in full and allow us or our authorized agents to enter any premises and recollect such goods without prior notice

## **9. Limitation of liability**

(a) Except for death or personal injury caused by our negligence our liability to you for defective goods shall be limited to the sale price of the goods.

(b) We hereby exclude any liability to you for loss of profit, loss of goodwill or from any type of indirect, incidental, special, consequential or exemplary loss, damage, costs or expenses of any kind whatsoever whether or not such loss was reasonably foreseeable

## **10. Force majeure**

We hereby exclude any liability to you if such liability is caused or contributed to by any circumstances beyond our reasonable control

## **11. Intellectual property rights**

All intellectual property rights in our own branded goods is our property and is retained by us after delivery without limitation

## **12. Waiver**

If we waive any of our rights under these Terms and Conditions on any occasion then such waiver shall not be taken as a waiver of our rights on any subsequent occasion

## **13. Severability**

If any part of these Terms and Conditions is held by any court or competent authority to be invalid or unenforceable in whole or in part then the validity of the remaining provisions shall remain in full force and effect

## **14. Governing law**

Any contract between you and us shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts