

CONDITIONS OF PURCHASE

1 DEFINITIONS

In these conditions of purchase the following words shall have the following meanings:-

- 1.1 "Contract" means any contract between Us and You incorporating these conditions of purchase;
- 1.2 "Finished Goods" means Our end products, into which the Goods have been and/or are intended to be incorporated;
- 1.3 "Goods" means any products and/or items (if any) being sold by You to Us and/or provided as part of the Services;
- 1.4 "Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses (whether direct or indirect) and/or liabilities;
- 1.5 "Services" means the services (if any) being supplied by You to Us;
- 1.6 "We, Us, Our, Ourselves" means Congleton Garden Machinery Ltd;
- 1.7 "You, Your, Yourselves" means the person from whom We order any Goods and/or Services.

2 BASIS OF CONTRACT

- 2.1 These conditions of purchase shall govern the agreement between You and Us for the purchase of the Goods and/or Services to the exclusion of any other terms or conditions including (without limitation) those that are implied by trade, custom, practice, or course of dealings.
- 2.2 These conditions of purchase supersede all previous terms and conditions and shall replace any terms and conditions previously notified to You.
- 2.3 No variation to these conditions of purchase shall be binding on Us unless contained in Our order or agreed in writing between You and one of Our directors.
- 2.4 Orders placed by Us for Goods and/or Services shall still be subject to these conditions of purchase whether or not this is expressly stated. Our order shall be deemed to be accepted on the earlier of:
 - 2.4.1 You issuing written acceptance of Our order; or
 - 2.4.2 You doing any act consistent with fulfilling Our order, at which point the Contract shall come into existence.
- 2.5 Our employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the order unless confirmed by Us in writing. You acknowledge that You do not rely on any representation and/or warranty that has not been made in accordance with these conditions of purchase.
- 2.6 If the Goods are to be utilised in connection with another contract between Us and a third party then the terms and conditions of such third party contract shall form part of the Contract except to the extent that the terms of such third party contract conflict with these conditions of purchase in which case these conditions of purchase shall prevail. Details of any such third party contract will be supplied upon request.

3 QUALITY AND QUANTITY

- 3.1 It is a condition of the Contract, that the specification, quality and quantity of the Goods is as set out in Our order or as otherwise agreed in writing by an authorised representative.
- 3.2 It is a condition of the Contract that the Goods shall be free from any and all defects in materials, workmanship and/or design and will comply with all legal requirements and regulations relating to the Goods.
- 3.3 As a condition of the Contract, You guarantee that all Goods will, from the date of commissioning of the Finished Goods by Our customers, remain free from any defects in materials, workmanship and/or design for a period of 12 months.
- 3.4 You shall comply with all applicable regulations and/or other legal requirements concerning the manufacture, labelling, packaging, packing, storage and/or delivery of the Goods and/or the performance of the Services.
- 3.5 You shall permit and/or procure that We may, at Our request, inspect and test the Goods during manufacture, processing or storage whether at Your or a third party's premises. Notwithstanding any such inspection or testing, You shall remain fully responsible for the Goods.
- 3.6 If as a result of inspection or testing We are not reasonably satisfied that the Goods will comply in all respects with the Contract then We may without Liability cancel the Contract.
- 3.7 The Goods shall be marked in accordance with Our instructions and any applicable regulations and/or requirements of the carrier. The Goods shall be properly packed and secured so as to reach their destination in a good and undamaged condition.
- 3.8 The Services must be performed by appropriately qualified and trained personnel, with due care and diligence and to the highest quality standards.

4 DELIVERY

- 4.1 Time for delivery of Goods and/or performance of Services shall be of the essence. Goods and/or Services shall be delivered and/or performed during normal business hours. Dates for delivery and/or performance shall be as set out in Our order unless otherwise agreed by Us in writing. Time shall also be of the essence for any extension of time for delivery and/or performance agreed by Us.
- 4.2 If Goods and/or Services are not delivered and/or performed by the due date, We may, without having any Liability to You, at our option, cancel in whole or in part the Contract.
- 4.3 Title and risk in all Goods sold to Us shall not pass to Us until they have been unloaded at Our premises. You shall insure the Goods in transit until delivery to Our premises for all risks for an amount equal to 110% of their value. You shall procure that Our interest is noted on such policy of insurance and hold any proceeds of such insurance on trust for Us if any such Goods are damaged or destroyed in transit.
- 4.4 If We are unable to take delivery of the Goods at the due time for delivery You shall store them on Our behalf until We confirm that the Goods may be delivered. We will bear Your reasonable costs of such storage where the period of storage exceeds 14 days.
- 4.5 Any signature on Our behalf on receipt of any Goods is only confirmation that a certain number of packages has been

delivered, it is not confirmation that the Goods delivered are of the correct quantity, quality, specification, materials, design and/or workmanship.

- 4.6 A packing note quoting the number of Our order must accompany each delivery or consignment of the Goods and must be displayed prominently. You shall ensure that if Goods are subject to special storage instructions this is clearly stated on the packing note.
- 4.7 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not be severable.
- 4.8 We shall be entitled to reject any Goods delivered which are not in accordance with the Contract. We shall not be deemed to have accepted, and may still reject any Goods, until We have had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 4.9 Goods purchased by Us may be stored for long periods before being utilised. We shall notify You of any defects in Goods as soon as reasonably practicable.

5 PRICE AND PAYMENT

- 5.1 The price for the Goods and/or Services shall be as set out in Our order and unless otherwise so stated shall be inclusive of:-
 - 5.1.1 any applicable value added tax (unless agreed otherwise in which case We will in addition pay VAT subject to receipt of a valid VAT invoice); and
 - 5.1.2 all charges for packaging, packing, shipping, carriage, insurance and/or delivery of the Goods and any duties, imposts or levies other than value added tax.
- 5.2 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without Our prior written consent.
- 5.3 We shall be entitled to any discount for prompt payment, bulk purchase and/or volume of purchase customarily granted by You.
- 5.4 Payment by Us shall only be made by B.A.C.S and You must provide Us with Your correct bank details. We shall not be liable to make payment to You unless and until You have provided Us with this information.
- 5.5 Unless other payment terms have been agreed in writing between one of Our authorised representatives and You the terms for payment by Us of any undisputed invoice shall be:
 - 5.5.1 in respect of the Services, 60 days from the end of the month in which the Services are performed;
 - 5.5.2 in respect of the Goods, 60 days from the end of the month in which the Goods are delivered, provided always that We have been correctly invoiced by the tenth day of the month following the month of delivery and/or performance. If We have not been correctly invoiced by this date and/or You have not provided Us with Your correct bank details, payment shall be due 60 days from the end of the month in which We have been correctly invoiced and We have received notification of Your correct bank details.
- 5.6 We may, without limiting any other rights or remedies We may have, set off any amount owed by You against any amounts payable by Us to You.

6 REJECTION OF GOODS AND/OR SERVICES

- 6.1 Where all or any part of an order or batch of Goods fail to satisfy any of the conditions of the Contract relating to specification, quality, quantity, materials, workmanship and/or design We may at Our option reject either all of the order or batch of Goods or part of such order or batch of Goods.
- 6.2 At Our option, any Goods which are rejected shall be either replaced by You within 7 days or We may cancel without Liability to You the contract relating to such rejected Goods and shall be entitled to a full refund of the price relating to such rejected Goods if We have paid for such Goods and shall be entitled to any costs We incur.
- 6.3 Rejected Goods may, at Our option, be made available for collection by You and shall be collected within 7 days of You being notified of their rejection or shall be sold by Us for the price attainable by Us and credit shall be given by Us for the amount We received for the rejected Goods. If you require Us to return any packaging material, this should be clearly stated on the packing note. Any such materials shall be returned to You at Your cost.
- 6.4 We shall be entitled to reject any Services performed by You which are not in accordance with the Contract provided always that such rejection is notified to You within 30 days from the date of performance. We shall not be deemed to have accepted the adequacy and quality of performance of the Services until the expiry of that date.
- 6.5 Each of the exclusions and/or limitations in these conditions of purchase shall apply to Liability for breach of contract, Liability in tort (including negligence) and Liability for breach of statutory duty.
- 6.6 Nothing in this Contract shall exclude or limit Our Liability for death or personal injury due to Our negligence or any Liability which is due to Our fraud or any other Liability which it is not permitted to exclude or limit as a matter of law.
- 6.7 These conditions of purchase shall apply to any repaired or replacement Goods and/or Services supplied by You.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 You warrant that the Goods and/or Services do not infringe any intellectual property rights of any third party.
- 7.2 You warrant that the Goods and Services comply with any and all legal and/or regulatory requirements.
- 7.3 Any specification supplied by Us to You, or specifically produced by You for Us, in connection with the Contract, together with all patents, copyright, design rights (whether registered or unregistered) trade marks (whether registered or unregistered) skill and/or know-how and/or any other intellectual property rights, whether existing now or in the future, wherever existing in the world, together with the right to apply for protection of the same, in the specification, shall be owned exclusively by Us absolutely.
- 7.4 You shall not disclose to any third party or use any such specification referred to in clause 7.3 and You shall ensure that your employees, agents or sub-contractors keep the same confidential except to the extent that it is or becomes public knowledge through no fault of Your own, or as required for the purpose of the Contract.

- 7.5 You agree that, at Your cost, You will do all acts and execute all documents which are necessary or desirable to give effect to clause 7.3 above and/or to assist Us in the application, registration, renewal and/or protection of any such intellectual property rights.

8 INDEMNITY

- 8.1 You agree to indemnify Us and keep Us indemnified against any and all damages, awards, costs (including legal costs on a full indemnity basis), expenses, claims and any other losses and/or liabilities which We may suffer directly or indirectly relating to the Goods and/or Services and/or the Contract as a result of or in connection with:
 - 8.1.1 any act and/or omission by You or Your employees, agents and/or sub-contractors which is in breach of the Contract, or in breach of any tortious duty of care and/or in breach of any statutory duty; and
 - 8.1.2 any claim that the Goods and/or Services infringe, or their importation, use or resale infringes the patent, copyright, design right, trade mark and/or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification supplied by Us; and
 - 8.1.3 any claim made against Us by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods or Finished Goods or in the performance of the Services, to the extent that the defect in Goods or Finished Goods or performance of the Services is attributable to the acts or omissions of You, Our employee, agents or sub-contractors.
- 8.2 This clause 8 shall survive termination of the Contract.

9 TERMINATION

- 9.1 We shall be entitled to cancel the Contract in respect of all or part of the Goods and/or Services by giving notice to You at any time up to 14 days before the due date for performance and/or delivery without any Liability to You.
- 9.2 Either party may immediately terminate the Contract by written notice to the other party where the other party:
 - 9.2.1 is in breach of the terms of the Contract and where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
 - 9.2.2 ceases or threatens to cease to carry on business;
 - 9.2.3 proposes to compound with its creditors, applies for an interim order under Section 252 Insolvency Act 1986, has a bankruptcy petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, an administrator or administrative receiver appointed over all or any of its assets or takes or suffers any similar or analogous action in any jurisdiction; and/or
 - 9.2.4 appears reasonably to be about to suffer any of the above events.
- 9.3 Termination of the Contract, however arising, shall not affect any of the parties rights and remedies that have accrued at termination.

10 GENERAL

- 10.1 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.2 No waiver by Us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3 If any provision of these conditions of purchase is held by any competent authority to be invalid or unenforceable in whole or in part that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of these conditions of purchase and the remainder of the provision in question shall not be affected.
- 10.4 All third party rights are excluded and no third party shall have any right to enforce a Contract and/or a Contract term by virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any members of Our group (if applicable) who shall, subject to Our consent, maintain their third party rights. Any rights of a third party to enforce a Contract and/or Contract term may be varied and/or extinguished by agreement between the parties.

11 ASSIGNMENT AND LAW

- 11.1 You shall not sub-contract any of Your obligations under the Contract without Our prior written consent.
- 11.2 You may not assign or transfer or purport to assign or transfer to any other person any of Your rights or obligations under the Contract without Our prior written consent.
- 11.3 Sections 11, 15A, 30(2A) and 35 of the Sale of Goods Act 1979 shall not apply to the Contract.
- 11.4 The Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the courts of England.