INTRODUCTION

1. In these conditions, the “Company” means New Place Nurseries Ltd. The “buyer” means each person, firm or company purchasing any goods, “consumer” means persons purchasing goods for domestic purposes. The Contracts Act 1979 and “goods” means the goods or materials supplied or to be supplied by the Company to the buyer.

2. These conditions shall apply to the contract between the buyer and the Company for the sale of those goods detailed in the order.

3. These conditions shall apply to the exclusion of any terms of purchase, order or delivery given by the buyer, whether written or oral, unless stated in writing and signed by a duly authorised representative of the Company.

4. No variation, exclusion or waiver of any of these conditions and/or conditions contained herein shall be binding on the Company by a duly authorised representative of the Company.

5. ORDERS

2.1 The buyer’s order (whether given orally or in writing) shall be deemed to be an offer to purchase the goods specified in the order. Such offer shall be deemed to have been accepted on despatch of the goods.

2.2 The parties agree that if the buyer is entitled to reject part of a delivery of goods the buyer shall only be entitled to reject that part of the goods and shall accept the balance.

6. PRICE

3.1 The price payable for the goods shall (subject as provided below) be the price specified in the Company’s price list in force at the date of despatch or collection. The Company reserves the right to charge for any such price without notice at any time prior to contract.

3.2 All prices for goods quoted by the Company are exclusive of Value Added Tax but are carriage paid to destinations in the United Kingdom (excluding islands other than the Isle of Wight).

4. PAYMENT

4.1 The net amount of invoices shall be made in full without deduction, set off or counterclaim no later than the time specified on the relevant invoice, time to be of the essence.

4.2 Where an invoice is not paid by its due date then the buyer hereby agrees to pay interest unpaid from the due date and the buyer shall pay interest (both before and after judgement) on the total sum owing to the Company at a rate of 2% per month. Such interest to accrue on a monthly basis.

4.3 The buyer will be liable, on a full indemnity basis, for all costs, expenses and liabilities of whatever nature incurred by the Company in connection with the recovery of settlement of debt not paid by the due date.

4.4 The date that the Company has been paid shall be the date that the Company’s bank irrevocably credits the Company’s account. The Company shall use all reasonable endeavours to ensure this is as early as possible.

5. DELIVERY AND PASSING OF PROPERTY AND RISK TO THE BUYER

5.1 Goods shall be delivered at the place of delivery as stated on the invoice or on collection by or on behalf of the buyer.

5.2 The risk of damage to or loss of the goods shall pass to the buyer at the time of delivery or collection if the buyer is in receipt of the goods at the time when the Company gives notice of such delivery.

5.3 If the buyer fails to take delivery of any goods ordered by him the buyer shall pay the Company a commercial rate for the handling, storage and re-delivery of such goods from the time when such delivery had been requested and the buyer shall be liable to pay for the storage, handling, and re-delivery of such goods.

5.4 All necessary effort will be made by the Company to effect delivery in accordance with any pre-arranged dates, all delivery dates and schedules stated by the Company are approximate and shall not imply any obligation on the part to deliver the goods on any particular date or within the time stipulated. The Company shall be in no circumstances liable for any loss or damage the buyer may incur as a result of delay in delivery in accordance with these conditions.

5.5 The buyer shall inspect the goods on delivery and it is agreed that unless the buyer immediately rejects the goods the carrier leaves with them the buyer shall be deemed to have acquired the property in the goods.

5.6 Notwithstanding delivery and the passing of risk in the goods to the buyer or any other provision of these conditions adverse to the title to the goods only pass to the buyer on receipt by the Company in cash or cleared funds payment in full in the prices of (1) the goods and (2) all other goods of whatever nature agreed to be sold by the Company to the buyer for which payment is then due.

6. DANISH TROLLEYS

6.1 If goods are delivered to the Buyer by Container-Cor- rial Trolleys and Pot Plant Containers and shovels and these are left at the Buyer’s premises, the following terms and conditions shall apply.

6.2 All such trolleys, containers and shovels delivered by The Company to the Buyer shall be used for no purpose other than for containing plants delivered by The Company. 

6.3 Ownership of the said trolleys, containers and shovels shall remain with The Company. 

6.4 All such trolleys, containers and shovels or (equivalent in number and condition) are returnable to The Company on demand and must be returned to The Company. 

6.5. While trolleys, containers and shovels are on the Buyer’s premises or within the Buyer’s control, the Buyer shall take all reasonable steps to keep and secure the same in good working order. 

6.6 Damages or losses caused to the trolleys or containers or shovels shall be charged to the Buyer together with any handling costs involved at the then current charge rate for that purpose. 

6.7 All trolleys and shovels shall be exchanged like for like. 

6.8. All returned trolleys must have Container Centralen identification. 

6.9. Non exchange of the fee for the trolleys will incur daily rental charges in line with those set by Container Centralen.

7. CLAIMS

7.1 The buyer shall set out in clause 5.5 the goods on their arrival or collection and shall be responsible for any consequential losses caused by any defects in the goods that a reasonably competent person in the buyer’s profession would have detected during a reasonably thorough inspection.

7.2 Any claim by the buyer which is based on short delivery or on defect in the goods or which involves the buyer’s quality unsatisfactory or their failure to correspond with the Company’s specification for such goods must (irrespective of whether the goods have been accepted or purportedly rejected in part) be made in writing and be received by the Company setting out both the basis and level of the claim within 2 days after delivery of the goods to the buyer. Failing this, the buyer shall be deemed to have accepted the goods as unconditionally and the Company shall have no liability for any such short delivery, unsatisfactory quality or failure to correspond with specification.

7.3 The Company shall have 2 days from the receipt of any such claim to accept or reject the claim and communicate with the same to the buyer (time not being of the essence), but in the absence of notice of rejection the validity of a claim the Company has not accepted shall be deemed to be valid. 

7.4 Any goods must be returned at the expense of the buyer (at the Company’s discretion). Return of such goods may be at the Company’s option to be recharged to the buyer (at the Company’s discretion).

7.5. No warranty is given that the goods are fit for any purpose other than the purpose for which they were sold, and the buyer shall be responsible for any further liability to the buyer in respect of such defect or failure. All goods subject to credit note or replacement must be returned to the Company.

8. WARRANTIES

8.1 Other than in respect of death or personal injury caused by the negligence of or breach of contract by the Company, the Company shall be liable to the buyer for any damages or losses whatever whatsoever caused by the negligence or other breach of duty by the Company, its employees or agents or otherwise that may directly or indirectly result from the use of the goods or connected with the goods in any other way.

8.2 No warranty is given that the goods are fit for any purpose other than the purpose for which they were sold and the buyer shall be responsible for any further liability to the buyer in respect of such defect or failure. All goods subject to credit note or replacement must be returned to the Company.

9. NOT WAIVER

9.1. No waiver or variation of these terms and conditions in writing or by any other means will be binding on the Company unless such waiver or variation is in writing and signed by a duly authorised representative of the Company.

9.2. The buyer acknowledges that the Company’s employment of any representative is not to be deemed to be authorise any representation or give any advice concerning the goods unless such representation warranty or advice has been issued in writing by a duly authorised representative of the Company.

9.3. By entering into this contract the buyer acknowledges and confirms that it is not a consumer, that it does not seek or intend to resell the goods on its own behalf and that it is purchasing the goods with the intention of re-selling the same to consumers in accordance with its business.

9.4. BUYER’S DEFAULT

9.1. If the buyer: 

i. refuses or fails to take delivery of the goods tended in accordance with the contract; or

ii. breaches any of those conditions including without limitation failure or delay in payments for any goods (or part thereof) on the due date; and/or

iii. makes any voluntary arrangement with creditors or becomes bankrupt or has a receiver appointed in respect of any or all of the buyer’s assets; and/or

iv. commits any act which may prejudice the validity of a claim the Company may have in respect to the buyer; and/or

v. is in breach of the terms of clause 9.2 below and/or

vi. if the Company reasonably apprehends that any of the things set out in points i) to v) may be to occur or to occur in relation to the buyer; the Company may without prejudice to its other rights forthwith terminate this contract and in such event the Company shall be entitled to all payment of all sums under this contract whether or not the price in respect of the goods is otherwise due and payable by the buyer at such time and/or immediately and without notice enter upon any premises of the buyer where goods are stored or where they are reasonably thought to be stored for the purposes of repossessioning the same.

9.2. The Company shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods in respect of which title has not passed to the buyer in accordance with clause 5.0 of this contract and in such event the Company may sell or dispose of the goods and all moneys owing by the buyer to the Company shall (without prejudice to any other right or remedy of the Company) become due and payable.

10. NO WAIVER

10.1. No forbearance or indulgence by the Company shown or granted to the buyer in respect of one or more of the conditions of the sale of the goods shall prejudice or alter in any way the rights of the Company against the buyer.

11. CONSTRUCTION

11.1 All disputes arising out of or in connection with the contract, shall be governed by English law and, in entering into the contract the buyer submits to the non-exclusive jurisdiction of the English Courts.

12. FORCE MAJEURE

12.1 This contract may be terminated or suspended in whole or in part by the Company by reason of the prospect, happening or result of any industrial dispute, act of God, war, civil commotion, legislation, breakdown of machinery, inability to obtain supplies, raw materials, equipment fuel, or transportation or breakdown of or the necessity to import or export or other licences or the consent of any governmental authority or any other cause or circumstances whatsoever beyond its control without liability to the Company for any loss or damage whether direct or indirect. If the Company shall elect to terminate this contract pursuant to this clause 12, and a part of the goods delivered and payment for all or any part of such goods have already been so delivered at the time of such termination the buyer shall remain liable for payment of the price of the part that relates to such delivered goods irrespective of termination in respect of that part of the price relating to such goods delivered.