

FloriPro Services™, A Division of Syngenta Seeds Limited

Terms and Conditions

Your attention is specifically drawn to the provisions of paragraphs 9 and 11 which limit Syngenta's liability to buyer.

- 1.1 The terms and conditions set out in this document (together with any acknowledgement of order issued by Seller) form the contract between Seller and the buyer for the sale and purchase of flowers (including seed, young plants or unrooted cuttings) ("the Goods") by FloriPro Services (a division of Seller) ("the Contract"), to the exclusion of all other terms and conditions (including any terms or conditions which buyer purports to apply under any purchase order, confirmation of order or similar documents) unless otherwise expressly agreed in writing.
- 1.2 All orders for Goods by buyer from Seller shall be deemed to be an offer by buyer to purchase the Goods subject to these terms and conditions and all acknowledgements of orders issued by Seller shall be deemed to be issued subject to these terms and conditions, unless otherwise agreed by Seller in writing.
- 1.3 Buyer must ensure that the terms of its order are accurate.
- 2.1 Seller will not be bound by any quotation given and shall have the power to vary or withdraw a quotation at its discretion at any time. Prices quoted are exclusive of any applicable tax (such as VAT) which must be paid by buyer in addition to the price of the Goods.
- 2.2 Seller reserves the right to vary its prices. The price for the Goods shall be the price set out in Seller's published price list current at the date Seller issues the acknowledgement of order.
- 2.3 Prices set out in Seller's price lists are inclusive of the cost of carriage to destinations within Great Britain.
- 2.4 Where the place of delivery required by buyer is outside Great Britain, Seller reserves the right to charge buyer for the additional cost of carriage, insurance and any customs charges, taxes or duties, related to shipping to such place of delivery.
- 3.1 Seller has a minimum total order value of £1,000.00 (ex VAT) per calendar year (with a minimum order value of £75.00 (ex VAT) applying to any part of an order which relates to seeds). Seller has a minimum despatch quantity of 10 boxes of young plants per delivery. Seller reserves the right not to supply orders that fall below these minimum values.
- 4.1 All deliveries are subject to the usual crop and processing results. Seller shall not be liable for crop failure if the crop and processing results are not usual and Seller shall be entitled to choose which orders it fulfils and shall not be required to deliver a pro rata quantity of the Goods. Where it is not possible to fulfil any order in part or in full because of crop failure, Seller shall use reasonable endeavours to deliver comparable substitute goods (such substitute goods being of the same species, a similar colour and having a similar growth habit to the Goods). In such circumstances, buyer shall not be entitled to compensation, but shall only be required to pay for Goods (including any substitute goods) delivered.
- 5.1 Delivery of the Goods will take place by Seller delivering the Goods to an address nominated by buyer and agreed to by Seller or (in the case of attempted delivery) at the point when delivery is attempted by Seller.
- 5.2 Any dates specified for the delivery of the Goods are approximate only. If no dates are so specified, delivery will be within a reasonable time, in conformity with the sowing or planting season. Time of delivery shall not be of the essence of the Contract. Subject to the other provisions of these terms and conditions Seller will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of Goods (even if caused by Seller's negligence).
- 5.3 Seller shall be entitled to deliver the Goods in instalments. Where the Goods are delivered in instalments each delivery shall constitute a separate contract and failure by Seller to deliver any one or more of the instalments in accordance with these terms and conditions or any claim by buyer in respect of any one or more of the instalments shall not entitle buyer to treat the Contract as a whole as repudiated.
- 5.4 Ornamental young plants will be delivered in special (which may be design patent protected) trays and, depending on the quantity stowed on a pallet, will remain the property of Seller. Buyer acknowledges that any intellectual property rights in the design of the trays is the property of Seller and agrees to abide by the conditions laid down in this paragraph 5.
- 5.5 Buyer is bound to store in safe keeping these trays and pallets with reasonable care until they are collected by Seller. Parties shall agree on the frequency with which the trays and pallets will be collected by Seller. If buyer loses or damages these trays or pallets he shall pay a fee of £4.00 per missing tray and £10.00 per pallet.
- 5.6 All trays have been individually numbered and registered with a barcode to safeguard property. Buyer is not allowed to remove this barcode or make it illegible in any way.
- 6.1 Seller will not accept returned Goods unless in exceptional circumstances and with prior written authorisation from the management. However, under no circumstance will Seller consider acceptance of returned Goods when the original packaging has been opened or tampered with. Seller will make a charge of £25.00 against any such returns of Goods against their original order, due to additional costs.
- 6.2 Following an order of acknowledgment being issued, buyer shall not be entitled to cancel part or all of an order without the prior written consent of the Seller. 7.1 Seller shall be entitled to invoice buyer for the price of the Goods at any time on or after delivery of the Goods (including for the avoidance of doubt delivery of each instalment of the Goods).
- 7.2 Payment for the price of the Goods is due within 30 days of the date of invoice and buyer shall not exercise any right of deduction, set-off or counterclaim. Time for payment shall be of the essence.
- 7.3 If buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) Seller may charge buyer interest and other charges in accordance with the terms of the Late Payment of Commercial Debts (Interest) Act 1998 and shall be entitled to recover from buyer all charges (including legal fees) reasonably incurred in taking steps to recover the debt.
- 7.4 Payment must be made in the currency stated on Seller's invoice by direct bank transfer to Seller's nominated account or by such other method as Seller may specify from time to time. Seller reserves the right to refuse to accept payments by cash, cheque or any other method and shall not be required to justify such refusal. Seller shall not be obliged to issue buyer with a receipt unless buyer requests one in writing.
- 7.5 If buyer makes any voluntary arrangement with its creditors, or becomes subject to an administration order, or has an administrator appointed, or (being an individual firm) is declared bankrupt, or (being a company) goes into liquidation, or an encumbrancer takes possession, or a receiver is appointed over any of the property or assets of buyer, or buyer ceases or threatens to cease to carry on business, or any analogous event occurs in any jurisdiction or Seller reasonably apprehends that any of the preceding events is about to occur in relation to buyer and notifies buyer accordingly then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to cancel the Contract or suspend any further deliveries under the contract without any liability to buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any agreement or arrangement to the contrary.
- 8.1 Risk of damage to or loss of the Goods shall pass to buyer at the time of delivery or deemed delivery (whichever is earlier).
- 8.2 The property in the Goods (both legal and equitable) shall not pass to buyer until Seller has received in full (in cash or in cleared funds) the price for the Goods plus all applicable sales tax and carriage costs (if any) and all other sums (whether payable under the Contract or not) which are or will afterwards become due and owing from buyer to Seller.
- 8.3 Until the property in the Goods has passed to buyer, buyer shall:
 - 8.3.1 hold the Goods on a fiduciary basis as Seller's bailee;
 - 8.3.2 store the Goods (at no cost to Seller) separately from all other Goods of buyer or third parties and identify them as Seller's property;
 - 8.3.3 not destroy or deface any identifying mark on the Goods or their packaging;
 - 8.3.4 keep the Goods insured on Seller's behalf for the full price of the Goods against 'all risks' to the reasonable satisfaction of Seller and on request produce the policy of insurance to Seller; and
 - 8.3.5 hold all proceeds of insurance referred to in paragraph 8.3.4 on trust for Seller and not mingle them with any other money or pay the proceeds into an overdrawn bank account.
- 8.4 Notwithstanding that the Goods (or any of them) remain the property of Seller, buyer may sell the Goods in the ordinary course of buyer's business at full market value for the account of Seller. Any such sale shall be a sale of Seller's property by buyer on buyer's own behalf and buyer shall deal as principal when making such sales.
- 8.5 Buyer shall not pledge or in any way offer security for any indebtedness any of the Goods or plants which are the property of Seller. Without prejudice to any other rights of Seller, if Seller does so, all sums owing to Seller shall forthwith become due and payable.
- 8.6 At any time before the property in the Goods has passed to buyer, Seller may by written notice end buyer's right to sow and sell the Goods and buyer shall immediately return the Goods to Seller (at buyer's cost). After giving such notice to buyer shall no longer be in possession of the Goods with the consent of Seller and Seller and/or its representatives may enter any premises where the Goods are or are reasonably believed to be and remove the Goods.
- 8.7 Nothing in this paragraph 8 shall change buyer's obligation to pay for the Goods.
- 9.1 **Seller shall not be liable for any claim (whether arising out of negligence or otherwise) unless it is notified to Seller in accordance with paragraph 11. The claim shall be documented in such a manner that it can be verified by Seller or a third party.**
- 9.2 Buyer is under a duty to mitigate any loss which he may claim from Seller.
- 9.3 Subject to paragraph 9.7, **in the event of a justifiable and valid claim by buyer, seller shall only be liable to reimburse buyer for the invoice value of the goods under claim.**
- 9.4 **As Seller has no special knowledge of the anticipated value of any crop or the costs to be incurred by buyer in relation thereto, seller shall not in any event be liable for any indirect or consequential loss whatsoever (including, without limitation, any loss of profits, loss of goodwill or similar losses) howsoever caused (including if caused by negligence of Seller or the negligence of its agents or sub-contractors).**
- 9.5 **In the event of any Goods sold not being of the correct species, or any Goods of the correct species and type proving defective in varietal purity, Seller will either (at its sole discretion) replace the defective Goods free of charge to buyer or will refund all payments made by buyer in respect of the defective Goods and this shall be the limit of Seller's obligation.**
- 9.6 Disease of plants can be transmitted by the wind, by insects, by animals or human agencies and may be seed borne. Seller believes the Goods hereby sold to be free from latent defect but it is not a condition of sale nor does Seller warrant that any Goods sold shall be free of such defect and will not be responsible in any way for the resultant crop.

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- 9.7 Without prejudice to the exclusion in paragraph 9.6, where diseased or pest-ridden Goods can be shown to have been supplied by Seller, and Seller's negligent act or omission was the only or principal cause of the infection, then in addition to the return of the invoice price of the Goods under claim in accordance with paragraph 9.3, Seller shall reimburse buyer for the costs of chemical clean up and decontamination which buyer reasonably incurs in order to contain, control and eradicate the disease or pest caused by such infected Goods. This clause sets out the entire liability of the Seller in such circumstances.
- 9.8 Seller is not liable for inappropriate use or if buyer or a third Party processes, treats or repacks the goods. Inappropriate use includes amongst other things: storing, treating, or using the delivered Goods other than in accordance with the prescriptions of Seller.**
- 9.9 Nothing in these terms and conditions excludes or limits Seller's liability for (i) death or personal injury or (ii) fraud.
- 9.10 All express or implied warranties, conditions, terms, representations, statements, undertakings or obligations (whether expressed or implied by statute, common law, custom, usage or otherwise) not contained in these terms and conditions are (to the maximum extent permitted by law) excluded from the Contract.**
- 10.1 Buyer shall be deemed to have examined the Goods on, or as soon as possible after delivery to determine:
- whether the correct Goods have been delivered
 - whether the quantity of delivered Goods is in conformity to the contract
 - whether the delivered Goods conform to the agreed quality standards or, if no quality standards were agreed upon, to reasonable standards.
- 10.2 Without prejudice to the other terms and conditions of the Contract, Seller shall only be liable to buyer in respect of defects in Goods reasonably apparent on a visual inspection if buyer reports any alleged defects in writing to Seller within 5 working days from delivery. The report shall make reference to lot number, delivery note and/or invoice of Seller.**
- 10.3 Without prejudice to the other terms and conditions of the Contract, Seller shall only be liable to buyer in respect of latent defects in Goods if buyer reports such latent defects in writing to Seller within 5 working days from discovery. The report shall make reference to lot number, delivery note and/or invoice of Seller.**
- 10.4 In case of a dispute about germination, varietal purity, trueness to type, genetical or technical purity remaining unsolved, either party may request an examination of the Goods by the Central Science Laboratory, York (or such other executive agency of government which has assumed or may assume its responsibilities) ("the Agency"). The cost of such examination shall be borne by the party against which the Agency makes the finding. The finding of the Agency will be binding on both parties, notwithstanding the right of parties concerned to submit to the authorities referred to in paragraph 21 any disputes about the consequences of this test result.
- 11.1 All information given in Seller's catalogue or otherwise provided by Seller, or by any agent or representative on Seller's behalf, relating to varieties, varietal characteristics or periods of maturity or otherwise relating to the performance of the Goods, is given for general guidance only. Prospective customers are advised that any information so given or proved does not constitute a representation by Seller as to matters and should not be relied on as such, neither does it constitute any warranty on Seller's part.
- 11.2 All seeds offered to which the E.U. regulations apply are "Standard Seeds" unless otherwise specifically designated as "Certified". Such seeds are offered as complying with the "E.U. Rules and Standards" or as complying with "Legal Standards" as laid down in these regulations.
- 11.3 Relating to varieties covered by Plant Breeders Rights Protection, it is an offence to offer for sale reproduced seed/plants. Any such transaction would be subject to charge of the Plant Breeders Rights levy appertaining at the time and payable to the Breeder or Breeders' Agent.
- 11.4 When Goods are described as "Hybrid" whether F1, double cross, or the like, plants grown from them cannot be relied upon to yield seed with the same characteristics, and in many cases a complete breakdown in the strain will occur. Growers should therefore be warned not to attempt to save from the produce of "Hybrid" varieties.
- 11.5 Owing to the lack of 100 per cent cross pollination in certain F1 hybrid varieties weak and usually dwarf inbred plants, sometimes known as "Sibs" can be seen in the plant beds. These should be left and not planted.
- 11.6 Where Goods have been treated with a liquid or powder to control pests or disease or have been fumigated, pelleted or rubbed, the particulars of purity and germination are based on tests made before application of the treatment, fumigation, pelleting or rubbing. The Goods are then re-tested to conform with "E.U. Statutory Standards".
- 12.1 Any recommendation given by Seller relating to the use of the Goods in response to a specific enquiry by buyer or otherwise is given in good faith but is the responsibility of buyer to satisfy itself of the suitability of the Goods for use in local conditions.
- 13.1 Seller shall not be liable to buyer in any manner or deemed to be in breach of Contract (subject to paragraph 9.9) because of any delay in performing or failure to perform any of Seller's obligations under the Contract if the failure or delay was due to any cause beyond Seller's reasonable control.
- 13.2 Without prejudice to the generality of paragraph 14.1 the following shall be included as causes beyond Seller's control: governmental actions, war, threat of war, riot, civil disturbance, sabotage or requisition, act of God, fire, flood, epidemic or accident, labour disputes including disputes involving Seller's workforce, or inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour ("force majeure").
- 13.3 If Seller is affected by force majeure Seller shall notify buyer of the nature and extent of the circumstances in question.
- 13.4 If Seller claims force majeure and is accordingly relieved from performing its obligations under the Contract for a continuous period of two months then either party may terminate the Contract by giving the other party not less than 14 days notice in writing. Termination under the provisions of this paragraph 14 shall not entitle buyer nor to render Seller liable to pay compensation.
- 14.1 All Goods sold in retail packaging may be resold by buyer only in the packaging supplied by Seller and in no case may any trade mark registered design or copyright other than those applied by Seller be marked on or applied in relation to the Goods except as may be permitted by law.
- 14.2 No right or license is granted under the Contract to buyer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use and resell the Goods.
- 15.1 For varieties for which Plant Breeders' Rights have been applied or granted, only a single flower production or plant production is allowed. This clause has to be maintained by buyer toward his clients as perpetual covenant. Violations lead to an immediate claimable fine of 40p per propagated plant. Seller retains as license holder the right to recover the actual sustained damage from the violator.
- 15.2 Seller or his agent is allowed to enter the company of buyer for control of the plant production as well as appointing an independent third party for control of the books of buyer. Buyer will give his co-operation to this.
- 15.3 Initial material of varieties belonging to the sector of ornamental plant products, which are protected by plant breeders' rights applied for or granted in the Netherlands and/or any other country or by virtue of a perpetual clause in a contract, may not be used for purposes of propagation or resale.
- 15.4 Varieties protected in this manner are indicated by Seller with the letters "R" or "P".
- 15.5 buyer will market, sell or transfer the plants produced by him only under the variety name and will provide with every plant marketed, sold or transferred a label containing the series name and the cultivar name.
- 15.6 Initial material supplied may only be used by buyer for the cultivation of cut flowers and/or other floricultural end products on the premises of buyer.
- 15.7 Seller shall have the right of access to buyer's premises or plots under his control where the initial material supplied by Seller is located, in order to inspect or access this material. Seller shall inform buyer of his visit in good time.
- 15.8 Buyer shall only resell the end product deriving from the cultivation material bought and received by him from Seller, under the respective (variety) name, and possible brand name.
- 15.9 If buyer comes across a mutant of the protected variety he shall communicate this fact immediately by registered mail to the holder of the plant breeders' rights.
- 15.10 At the written demand of the holder of the plant breeders' right buyer shall submit test material obtained from the mutant to the holder of the plant breeders' right, and do so within two months of receiving the demand.
- 15.11 Buyer hereby acknowledges that the discoverer of a mutant requires the permission of the breeder(s) of the source variety to commercially produce the mutant variety.
- 15.12 More explicitly, buyer acknowledges that the discoverer of a mutant requires the permission of the holder of the plant breeders' rights to the variety from which the mutant is derived to perform the actions mentioned below on all materials obtained from that variety, including materials already harvested, such as flowers, plants and parts of plants:
1. to propagate or multiply (breed) them
 2. to bring them into any condition for purposes of breeding
 3. to offer them for sale
 4. to sell or market them in any way
 5. to export them
 6. to import them
 7. to store them for any of the purposes mentioned above under (1) through (6).
16. A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999.
17. Buyer may not assign, sub-contract or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of Seller.
18. Any delay or failure on the part of Seller in enforcing its rights under the Contract shall not imply a waiver of its rights to enforce that particular right or any other right.
19. If part or all of any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable, the validity of the remainder of the provision in question and the other provisions of the Contract shall be unaffected.
20. This Contract and any issues or disputes arising out of or in connection with it (whether such issues or disputes are contractual or non-contractual in nature) shall be governed by and construed in accordance with English law and both parties hereby irrevocably submit to the exclusive jurisdiction of the English courts in respect of any such issues and disputes.