

Planting Machines Ltd

Conditions of Sale

1. TERMS OF CONTRACT

- 1.1. Planting Machines Limited ("the Seller") will supply goods to the purchaser ("the Buyer") on these Terms of Trade unless the Seller agrees in writing to change them.
- 1.2 The Seller will not be bound by any conditions included in the Buyer's order unless the Seller accepts them in writing.
- 1.3 If the Seller does not accept any conditions included in the Buyer's order, and the Buyer accepts delivery of goods delivered under that Order the acceptance of the delivery by the Buyer will be deemed to be acceptance by the Buyer of these Terms of Trade notwithstanding anything that may be stated to the contrary in the Buyer's inquiries or on the Buyer's order(s).
- 1.4 The Seller has the right to refuse to accept any orders or to cancel any orders which it has accepted if, in the opinion of the Seller, due to circumstances beyond Seller's control, it would be impractical or uneconomic to fill the order.
- 1.5 Contracts between the Buyer and the Seller will be governed by the law of New Zealand.
- 1.6 These conditions prevail over all Acts or legal obligations including the Sale of Goods Act 1908 and the Contractual remedies Act 1979. This is the exclusive contract between the parties and the provisions of the above Acts are hereby excluded.
- 1.7 Any waiver of these conditions by the Seller must be in writing and shall be a waiver for that particular transaction only.

2. PRICING

- 2.1 Unless otherwise agreed in writing the price for the goods is stated in New Zealand Dollars and shall be the current price excluding GST charged by the Seller at the date of dispatch. The costs of freight and GST (if any) will be shown separately on the invoice and will be payable by the Buyer.
- 2.2 The quoted price may be altered at any time should costing circumstances change due to fluctuation in exchange rates or unavoidable increases in manufacturing costs. Notice of any such change in quoted prices will be given in writing by the Seller to the Buyer.

3. PAYMENT

- 3.1 Where the payment amount is expressed in currency other than New Zealand dollars the Seller reserves the right to alter the payment amount as may be necessary to maintain parity with the New Zealand dollar. The payment period for the goods commences on the day of dispatch of the goods and the Buyer must pay for the goods no later than the 20th day of the month following dispatch of the goods from the Seller's premises such date to be ("the due date").
- 3.2 Failure to pay for the goods by the due date may result in further deliveries being stopped until the overdue payments have been made. The Seller reserves the right to demand from the Buyer and/or the owners of the Buyer such guarantee or security as the Seller may think necessary to secure to the Seller all sums due by the Buyer.
- 3.3 Unless prior arrangement has been made between the Buyer and the Seller, no extended credit terms beyond the due date with respect to the goods shall be available to the Buyer. However in the event that payment is not made by the due date, then from the due date, the Seller reserves the right to charge interest on a daily basis to the Buyer at a rate equal to 15% per annum until the overdue amounts are paid with the interest accruing after, as well as before, any judgment which the Seller may obtain against the Buyer. The Buyer will also be liable to pay all of the Seller's expenses and legal costs incurred in obtaining a remedy for the Buyer's failure to pay for the goods.
- 3.4 The Seller may accept and apply payments from the Buyer in respect of any indebtedness and the Seller will not be bound by any conditions or qualifications attaching to such payments.
- 3.5 Any cheque, bill of exchange or negotiable instrument given by the Buyer to effect payment under this contract will not be considered to be payment until that instrument has been actually paid or honoured.

4. RISK AND OWNERSHIP

- 4.1 All risk in the goods and liability for payment thereof will pass to the Buyer upon dispatch of the goods to the Buyer.
- 4.2 Even if risk has passed to the Buyer ownership in the goods will not pass to the Buyer until the Buyer has paid for the goods (and for all other goods supplied by the Seller to the Buyer) in full.
- 4.3 The Seller shall have the right to make delivery of the goods in installments. Short or over delivery shall not entitle the Buyer to refuse delivery and the Seller will not be liable for any loss or damage arising from delays in delivery however caused and whether in respect of the whole or part of the goods ordered and a delay in delivery shall in no event entitle the Buyer to cancel the contract. Where a contract involves more than one delivery, these conditions apply to each and every delivery.

5. TITLE

Until the Buyer has paid for the goods in full:

- (a) The Buyer holds the goods as fiduciary for the Seller and will deal with them as agent for and on behalf of the Seller (but the Buyer will not present itself as the Seller's agent to any third parties).
- (b) In the case of any processed or mixed goods which shall include any goods the subject of this contract the Seller shall retain property in the combined goods according to the contribution that the combined goods represent to make good the amount owed by the Buyer to the Seller.
- (c) The Buyer shall identify and account separately to the Seller for the goods and the proceeds thereof in the case of the combined goods to the extent of the

Seller's interest therein. For the avoidance of doubt it is declared that the Seller shall have the right to trace the proceeds of sale of any combined goods so as to entitle it to recover its interest in such proceeds in respect of any goods supplied.

- (d) The Buyer irrevocably gives the Seller and its agents the right to enter the Buyer's premises where the goods are stored to recover possession in the event of non payment by the Buyer by the due date. The Seller shall not be liable to any person for any damage caused to such premises by the reason of the Seller effecting such entry.
- (e) Failure by the Buyer either to store the goods or to separately account for the sale proceeds will not prejudice the Seller's claim to the goods or the sale proceeds.

6. CLAIMS

- 6.1 The Seller will at its option either replace defective goods or give a credit or refund for them as long as the Buyer's claim has specifically identified the goods and the defect and the Buyer returns the defective goods to the Seller in their delivered state within 21 days after the original delivery to the Buyer.
- 6.2 The Buyer shall have no claim for defectiveness in relation to goods which have been processed, altered or otherwise utilised by the Buyer.
- 6.3 Any claims in respect of goods short delivered, damaged or lost in transit must be reported to the Seller in writing within 15 days after the date of the invoice.
- 6.4 The Seller shall have the right at its discretion to repair or replace the goods in respect of which claims are made by the Buyer pursuant to clauses 6.1 and 6.3 or to refund or credit the portion of the purchase price applicable, thereby fully discharging the legal liabilities of the Seller.
- 6.5 The Seller will so long as the Buyer has used the goods in full accordance with the instructions of the manufacturer of the goods, use it's best endeavours to enforce for the benefit of the Buyer any guarantee or warranty given by the manufacturer of any goods supplied and/or sold by the Seller but shall be under no liability to the Buyer for or under any such guarantee or warranty.
- 6.6 The Seller shall not be liable for any direct or indirect consequential loss or damage attributable to the goods or to defects in the goods nor in respect of conditions or guarantees, whether expressed or implied by statute or at common law or otherwise which have not been confirmed by the Seller in writing.
- 6.7 The Seller shall not be liable for any resulting damages or loss attributed to the misuse of the goods purchased by the Buyer during the Buyer's use of such goods.

7. SUITABILITY OF GOODS

The goods are sold on description and notwithstanding that samples have been submitted or taken the goods shall not be obliged to correspond to such samples. The Buyer purchases the goods solely in reliance on its own judgment as to suitability for the purpose for which the goods are to be used.

8. DEFAULT BY BUYER

- 8.1 If the Buyer fails to pay the sale price of the goods or any other amount payable by the Buyer under this contract to the Seller on the due dates for payment or if the Buyer fails to carry out any terms of this contract or in the event of the bankruptcy, insolvency or receivership of the Buyer then without limiting in any way any of the rights of the Seller, the Seller shall have those rights set out in clause 8.2.
- 8.2 The rights referred to in Clause 8.1 are:
 - (a) The Seller shall be entitled to stop delivery of the goods and any other property agreed to be sold to the Buyer by the Seller and the Buyer shall pay all costs and expenses incurred as from due date for delivery of the goods including all costs for storage and insurance.
 - (b) The Seller shall be entitled to sell the goods at such a price and on such terms as the Seller shall determine and the Buyer in addition to any other amounts due to the Seller shall be liable to pay to the Seller the amount of any deficit between the amount actually received by the Seller from such sale and the sale price payable under this contract, with such deficiency being deemed to be due and payable on the completion of any such sale. The Seller undertakes to use all responsible care to obtain the best price obtainable in the circumstances on any such resale. Any amounts payable by the Buyer pursuant to this clause 8 shall bear interest at the rate of 2% per calendar month from the date that the same shall actually be incurred by the Seller or the due date for payment (whichever shall be the sooner).

9. FORCE MAJEURE

Strikes, lockouts, industrial disputes of any kind, fire, explosion, flood, accidents, Acts of God, breakdown of plant, unavailability of materials, war or other hostilities, local or national emergency or other civil commotion, Governmental acts, orders or regulations, or force majeure of any kind whether the cause thereof be direct or indirect shall relieve the Seller from its liability for performance under this contract and the Seller shall not be liable for any loss suffered by a Buyer in relation thereto.