

STANDARD TERMS AND CONDITIONS OF SALE ("CONDITIONS")

Brett Landscaping and Building Products referred to below as 'the Company', is only willing to supply products under these trading terms or under these trading terms with variations agreed by the Company in writing. These trading terms supersede any previously issued by the Company.

CONDITIONS OF SALE

1) DEFINITIONS

- 'Company' means "Brett Landscaping and Building Products"
- 'Purchaser' means the Purchaser named overleaf.
- 'Goods' means the goods to be supplied by the Company which are named or referred to overleaf including any instalment of the Goods or any part of them.
- 'Order' means an order for Goods from the Purchaser.
- 'Contract' means the agreement between the Company and the Purchaser for the supply of the Goods incorporating, as applicable: these Conditions, the quotation, Order, Acknowledgement of Order and acceptance letter issued by the Company.

2) CREATION OF CONTRACT

A quotation by the Company shall not constitute an offer and no Contract shall be taken as formed except by the Purchaser's Order being accepted in writing by the Company or by collection or delivery of the Goods. Any aforesaid acceptance may be communicated in writing via the post, or electronically, by the Company.

3) CONDITIONS OF TRADING

- The ordering of Goods by the Purchaser or the accepting of delivery or the collection of the Goods by the Purchaser shall be deemed to be unconditional acceptance by the Purchaser of these Conditions and its acknowledgement that they supersede, override and oust:
 - all previous negotiations, representations, warranties or agreements between the parties;
 - any other terms and conditions purported to apply.

- No variation of or addition to these Conditions shall form part of any Contract unless specifically accepted by the Company in writing.
- In the event of any inconsistency in the Contract, the documents shall prevail in the following order: the Company's acceptance letter, these Conditions, the quotation and the Order.

- Any typographical, clerical or other error or omission in any sale literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company is subject to correction without any liability on the part of the Company.
- No addition or variation to an Order may be made by the Purchaser after the Company has issued its Acknowledgement of Order. Any purported addition or variation shall be treated as a separate order at the time it is made and priced accordingly.

- The Company may assign or sub-contract all or any of its rights and obligations under the Contract.

- If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question will not be affected.
- The Company and the Purchaser do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

- No waiver by the Company of any breach of the Contract by the Purchaser will be considered as a waiver of any subsequent breach of the same or any other provision.

- The construction validity and performance of all contracts shall be governed by the laws of England and any claim or dispute arising therefrom shall be subject to the non-exclusive jurisdiction of the English Courts.
- PURCHASER'S OBLIGATIONS**
- The Purchaser will be responsible to the Company for ensuring the accuracy of the terms of any Order, including any application specification submitted by the Purchaser, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract.

- If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Purchaser, the Purchaser will indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property right of any other person which results from the Company's use of the Purchaser's specification.

5) PRICES

- Unless otherwise agreed in writing with the Purchaser, the price of the Goods will be the price quoted by the Company to the Purchaser at or immediately prior to the formation of the Contract. Such quotations are valid for a period of 30 days or until earlier acceptance by the Purchaser, after which time they may be altered by the Company without giving notice to the Purchaser.
- Unless otherwise expressly stated in writing by the Company, Orders are accepted on the basis that the price stated is the net price of the Goods (after deduction of any discounts) for delivery in accordance with the Contract and sold subject to these Conditions. Where any amendment or variation to these Conditions is agreed in writing by the Company the price may be increased. The Company may at any time prior to the Goods leaving the Company's premises increase the stated price to reflect all or part of any increased raw material, labour or transportation costs suffered by the Company since the price was stated together with any foreign exchange fluctuation, currency regulation or alteration of taxes or other duties. Such revised price shall be binding on the Purchaser. Where the Company's quotation or stated price does not refer to Value Added Tax it shall be deemed to be exclusive of any Value Added Tax which shall be payable in addition.

- All orders must be for a full carton or roll or for multiples thereof as shown in the Purchaser's price list and orders for intermediate amounts will be treated and charged as though they were for the next multiple.
- CANCELLATION**
- Regardless of any other provision in these Conditions, if at any time before the delivery of the Goods to the Purchaser, the Company is not satisfied as to the Purchaser's creditworthiness, the Company may cancel the Contract by giving the Purchaser notice in writing to that effect.

- In the event that the Company accepts, prior to despatch, a request from the Purchaser to cancel any Goods which have been made to order or specially acquired by the Company, the Company reserves the right to charge the Purchaser the quoted full price of the Goods.
- 48 hours notice is required from the Purchaser if it wishes to cancel any order. Failure to comply with this may result in haulage and restocking charges.

7) PAYMENT

- Accounts are due and payable on the 30th day of the month following the month in which the Goods are delivered or collected or deemed to have been delivered or collected, unless otherwise agreed in writing by the Company.
- The Purchaser will not be considered to have paid any amount tendered by cheque unless and until it has been credited to the Company's bank account.
- If the Purchaser shall fail to make payment in full in accordance with sub-paragraph (a) of this Condition then (without prejudice to any other rights of the Company and in addition to the loss of any discount) the Purchaser shall, without any need for the Company to give notice, become liable to pay the Company interest on the amount for the time being unpaid. This interest shall be calculated at 8% per annum above the annual Base Rate of National Westminster Bank Plc calculated from the date of the payment until the date of actual payment. It shall be payable after, as well as before, any judgment. The Company reserves the right to recover the professional costs incurred in enforcing the debt against the Purchaser.

- If the Purchaser shall fail to make payment in accordance with sub-paragraph 7 (a) of this Condition then:
 - the Company shall be entitled to suspend without incurring any liability in respect of all or any other deliveries to be made under that or any other contract with the Purchaser. In such event the Purchaser shall not in any respect be released from its obligations to the Company under that contract;
 - or instead of such suspension the Company shall be entitled to terminate the relevant contract or any other contract with the Purchaser in accordance with Condition 15 below and to claim damages from the Purchaser.

- The Purchaser shall not without the written consent of the Company be entitled to deduct or set off from any payment due pursuant hereto any claim for loss or expense alleged to have incurred by the Purchaser by reason of any breach or failure to observe the provisions of this or any other contract by the Company and the Purchaser expressly waives any common law right of set off to which he may be entitled.

- In the event of any claim or dispute by the Purchaser regarding the Goods, the Purchaser agrees it is only entitled to withhold payment on the disputed value only and not the whole invoice value or account balance
- Where carriage, packing or other charges are stated separately from the price they will nevertheless be payable by the Purchaser at the same time as if they formed part of the price and shall be treated as such. The Company shall be entitled to litigate or adjust for the price of the Goods and such other charges whether or not title in such goods shall have passed to the Purchaser in accordance with Condition 10 below.

- Time for payment is of the essence.
- Notwithstanding the foregoing the Company reserves the right to require payment of the price before delivery of any of the Goods or at any time thereafter.
- The Company shall be entitled but not obliged at any time or times without notice to the Purchaser to set off any liability of the Purchaser to the Company against any liability of the Company to the Purchaser (in either case however arising and whether any such liability is present or future, actual or anticipated, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purposes convert or exchange any currency. Any exercise by the Company of its rights under this Condition shall be without prejudice to any other rights or remedies available to the Company under this Contract or otherwise.

8) DELIVERIES, COLLECTIONS AND LIABILITY FOR DELAYED DELIVERY OR FAILURE TO SUPPLY

- Whilst the Company will use all reasonable endeavours to keep any stated delivery or collection dates or times of the day the time for delivery shall not be of the essence and it accepts no liability whatsoever for any damage or loss (including any consequential loss) resulting from delayed delivery or availability for collection unless:
 - a delivery or collection date or programme has been agreed in writing; and
 - the Company has failed for at least 21 days after the agreed date to make a delivery or make the Goods available for collection; and
 - the Purchaser has then given the Company at least 7 days notice in writing of its intention to rescind the Contract or bring a claim and at the end of the period given the Goods have not been delivered or made available for collection. For the avoidance of doubt, where the Goods are to be delivered in instalments each delivery will constitute a separate contract and (a) neither the failure of the Company to deliver any one or more of the instalments in accordance with these Conditions; nor (b) any claim by the Purchaser in respect of one or more instalments, entitle the Purchaser to treat the Contract as a whole as repudiated.

- Where the Company is to deliver Goods that are unpackaged and loose: (a) the Company reserves the right to deliver any quantity between the maximum and the minimum capacity of the delivery vehicle; and (b) the price of the Goods will be adjusted accordingly.
- In the event that a valid claim is notified to the Company in accordance with these Conditions the Company shall under no circumstances whatsoever have any liability to pay to a Purchaser a sum greater than the price of the Goods in respect of which failure to deliver or make available for collection is alleged.

- On notification to the Purchaser that the Goods are ready for despatch (and where appropriate within the framework of a delivery or collection programme) the Purchaser shall accept immediate delivery or in the case of collection from the Company's premises shall arrange for collection of the Goods failing which the Company may:
 - either effect delivery by whatever means it thinks most appropriate or arrange storage at the Purchaser's risk and expense pending delivery; and
 - after 14 days notice to the Purchaser requiring it to take delivery at any time, re-sell or otherwise dispose of the Goods or part of them without prejudice to any other rights the Company may have against the Purchaser for breach of contract or otherwise.

- If the Goods are not delivered on the expected date the Purchaser shall give written notice to the Company within 48 hours.
- In cases where the Purchaser concludes the contract of carriage and/or arranges for the insurance of the Goods in the Company shall be deemed to be acting solely as agent of the Purchaser and sub-sections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall not be applicable.

9) DELIVERY AND RISK

- Where the price quoted and accepted is for delivery at the premises of the Purchaser or a third party such delivery shall be made on hard roads to a hard and safe draw-in site suitable for unloading during normal working hours on normal working days and it shall be the responsibility of the Purchaser to ensure that delivery can be made in this manner.
- If it has been agreed that the Company will deliver the Goods at the premises of the Purchaser or a third party the Purchaser shall provide good firm level and cleared ground on which to stack the Goods. It shall be the responsibility of the Purchaser to ensure that the Goods are properly and safely stacked, stored and protected.

- It shall be the responsibility of the Purchaser to off-load the Goods at its expense and risk shall pass once the delivery vehicle arrives at the premises of the Purchaser or third party as appropriate. If the Purchaser takes longer than 30 minutes to unload the Goods, the Purchaser shall pay the Company's waiting charge of £100.00 per hour.
- Where the price quoted and accepted is for collection of the Goods from the Company's premises it shall be the Purchaser's responsibility to arrange collection of the Goods in suitable and safe vehicles during normal working hours on normal working days and only after prior agreement with the Company. Risk shall pass when the Goods are loaded on to the collection vehicle provided by the Purchaser or its agent and entry of the Purchaser's vehicles onto the Company's premises shall be at the Purchaser's risk (save for any claim arising from the Company's negligence which has resulted in personal injury or death).

- The Purchaser shall keep the Goods fully insured against all risks from the time of delivery.
- The Purchaser shall fully indemnify the Company in respect of any claims, liabilities, damages, costs and expenses made against or incurred by the Company by reason of damage caused to person or property and arising out of a failure by the Purchaser to comply with the provisions of this Condition.

10) TITLE TO GOODS

- Notwithstanding delivery or collection of the Goods or of any documents relating to them the Company will remain the sole and absolute owner of each item of Goods. Title shall not pass until payment has been made in full in cleared funds of:
 - the price for the Goods; and
 - any other sums payable in respect of the Goods including interest payable hereunder; and
 - any other sums payable (whether due or not) for other Goods previously or subsequently sold by the Company to the Purchaser and any other sums payable in respect of those other Goods including interest.

- For the purpose of these Conditions, all Goods of the same description purchased by the Purchaser from the Company and subsequently used or sold by the Purchaser shall be deemed to have been used or sold on a 'first in first out' basis so that the Goods remaining unused or unsold are deemed to be those most recently purchased. The Purchaser shall unless otherwise agreed by the Company in writing ensure that all Goods which are in the possession or control of the Purchaser and the property in which remains with the Company are held as the Company's fiduciary agent and bailee and are stored separately and labelled so that they may be readily identified as the Company's property.

- The Purchaser may sell any item of the goods in the ordinary course of its business prior to the Company receiving payment in full of such item and in such event the Purchaser shall hold on trust for the Company and shall account to the Company for the proceeds of sale of such item.
- The Company shall be entitled by its employees or agents to enter upon or into any land, buildings or vehicles where the Goods or part of them are situated to retake possession of them. Upon request the Purchaser shall notify the company of the location of any goods which are the Company's property.

- The Purchaser will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Purchaser does so all money owing by the Purchaser to the Company will, without limiting any other right or remedy of the Company, immediately become due and payable to the Company.

11) CLAIMS FOR DEFECTIVE GOODS

- Whether the Goods have been delivered by the Company or have been collected by the Purchaser, the Purchaser shall immediately after off-loading is completed examine the Goods to check that the correct quantity has been delivered and as far as is apparent that they have no apparent defects. If the Goods have been delivered by the Company and the Purchaser was present when off-loading was completed and is satisfied with the Goods following their examination the Purchaser will on request by the delivery driver sign a receipt slip. If the Purchaser is not satisfied with the Goods following their examination the Purchaser shall:
 - if the defect is of fundamental importance immediately notify the Company that it refuses to accept the Goods and indicate the nature of its dissatisfaction; such notification must in every case be within 24 hours of delivery or collection and confirmed in writing to the Company within 2 days thereof;
 - in the alternative, if the Purchaser signs a receipt slip used the nature of its dissatisfaction and obtain the countersignature of the driver on the same slip and confirm or indicate the same in writing to the Company within 2 days of delivery or collection; and
 - always give the Company an opportunity to inspect the Goods concerned in the condition and location in which they were off-loaded.

- The Company requires all claims to be made by the Purchaser to the Company in writing, within the following timescales:
 - claims in respect of short delivery or in respect of defects which are apparent on examination must be made in any event within 24 hours of delivery;
 - claims in respect of defects which are not apparent on examination must be made in any event within 10 days of receipt;
 - time for making all such claims is of the essence of the Contract and the Company's liability shall be limited as set out in Condition 12.

- The Purchaser shall not be entitled to reject the Goods or any part thereof by reason only of short delivery.
- Should the Purchaser refuse delivery or collection of the Goods on the grounds of damage the Company will make a restocking charge of 20% of the value of the Goods returned, if those Goods are found not to be damaged when inspected at the Purchaser's premises or received back at the Company's premises. In addition to the foregoing, all expenses for collection of the Goods from the Purchaser's premises shall be for the Purchaser's account and any charges made to the Company in connection with the return will be recharged to the Purchaser's account before any reimbursement is made in respect of the Goods returned.

- If the Purchaser wishes to return any Goods supplied under this or any other contract he shall in the first instance obtain the written permission in writing. Any arrangements for the return of Goods once agreed with the Company shall be the responsibility of the Purchaser and all expenses for collection of the Goods from the Purchaser's premises shall be charged to the

Purchaser's account. Any reimbursement due to the Purchaser will be subject to the condition of the Goods on receipt back at the Company's premises and calculated on the basis of the price originally charged for them. A restocking charge may also be made of 20% of the value of the Goods returned plus any applicable shipping or transportation costs.

- Without prejudice to Condition 12, under no circumstances shall the Company be liable to the Purchaser for any claim arising out of:
 - any description, samples, specification or other particulars relating to the Goods or their suitability for any particular purpose or for use under specific conditions unless they form part of this Contract. If the Purchaser intends that any such particulars, not contained in the Company's Publications valid at the date the Goods are ordered, form part of this Contract, it must so notify the Company in writing. Such notification must be made prior to the Goods being ordered and shall only apply to Goods ordered after the Company has confirmed in writing to the Purchaser that the particulars are accepted;
 - technical information, recommendations, statements or advice given by or on behalf of the Company relating to the methods of fixing or installing the Goods.

12) WARRANTY AND INDEMNITY AND LIMITS ON CLAIMS

- Subject to the Conditions set out below the Company warrants that the Goods will correspond at the time of delivery:
 - with the description, specification and particulars of the Goods detailed in the Contract; and
 - with any additional description specification to particulars forming part of the Contract after notification pursuant to Condition 11(1).

- The above warranty is given by the Company subject to it being under no liability:
 - in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Purchaser;
 - in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval;
 - under the above warranty or any other warranty, condition or guarantee if the total price for the Goods has not been paid by the due date for payment;
 - the above warranty does not extend to any Goods not manufactured by the Company, in respect of which the Purchaser will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company;
 - in the event that the Goods suffer from colour, shade, grading, texture or other minor variations, irregularities or nominal size differences which habitually occur in products manufactured by the process used by the Company.

- Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by the law. The Statutory Rights of Consumers are not affected by these Conditions.
- Any claim by the Purchaser which is based on matters referred to in Condition 11(b) shall be notified in the manner and within the time limits set out therein; and
 - if the Purchaser did not refuse to accept the Goods and did not duly notify the Company of a claim in accordance with these Conditions the Purchaser shall not be entitled to reject the Goods; and
 - the Purchaser shall have no liability; and
 - the Purchaser shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- In the event that a valid claim is notified to the Company in accordance with these Conditions, the Company shall deliver or make available for collection as appropriate, replacement Goods free of charge or at the Company's sole discretion refunded to the Purchaser the price of the Goods.
- Under no circumstances whatsoever shall the Company have any liability to a Purchaser in respect of any of the matters referred to in Conditions 11 or 12, greater than the price of the Goods.

- Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Purchaser by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, or any advice or assistance given relating to the Goods, or their handling, installation, use or disposal, for any direct or consequential loss, damage, costs, expenses or other claims for compensation whatsoever (and whether caused by negligence of the Company, its employees or agents or otherwise) which shall arise out of or in connection with the supply of the Goods or their use or resale by the Purchaser, except as expressly provided in these Conditions.

- If a claim is made against the Purchaser that the Goods or their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property right of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Purchaser, the Company will indemnify the Purchaser against all loss, damages, costs and expenses awarded against or incurred by the Purchaser in connection with the claim, or paid or agreed to be paid by the Purchaser in settlement of the claim, provided that: (a) the Company is given full control of any proceedings or negotiations in connection with the claim; (b) the Purchaser gives the Company all reasonable assistance for the purposes of any such proceedings or negotiations; (c) except pursuant to a final award, the Purchaser does not pay or accept the claim, or compromise any such proceedings without the consent of the Company, which will not be unreasonably withheld; (d) the Purchaser does nothing which would or might vitiate any policy of insurance or insurance cover which the Purchaser may have in relation to such infringement, and this indemnity will not apply to the extent that the Purchaser recovers any sums under any such policy or cover, which the Purchaser will use its best endeavours to do; (e) the Company will be entitled to the benefit of, and the Purchaser will accordingly account to the Company for, all damages and costs awarded in favour of the Purchaser which are payable by, or agreed with the consent of the Purchaser, which consent will not be unreasonably withheld, to be paid by, any other party in respect of any such claim; and (f) without limiting any duty of the Purchaser at common law, the Company may require the Purchaser to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Purchaser under this Condition.

- The Purchaser shall indemnify the Company in respect of any claims, proceedings, liabilities, damages, costs and expenses of whatsoever nature made against or incurred by the Company and arising out of failure by the Purchaser to observe the Company's instructions (whether oral or in writing) relating in any way whatsoever to the Goods.

13) HEALTH AND SAFETY AT WORK

- The Purchaser shall observe the health and safety instructions issued from time to time by the Company (copies of which are available on request) and shall be solely responsible for and shall keep the Company indemnified against any claims, liability, damage, costs and expenses arising directly or indirectly from use of the Goods other than in accordance with such health and safety instructions.

14) FORCE MAJEURE

- The Company shall not be liable for any loss or damage caused by non-performance or delay in the performance of any of its obligations to the Purchaser due to act of God, war, civil disturbance, government action, strike, lock out or trade dispute (whether involving its own employees or any other person), difficulties in obtaining materials, breakdown in machinery, fire or accident or any other cause whatsoever beyond the control of the Company. Should any such event occur the Company reserves the right to cancel or suspend the Contract with the Purchaser without incurring any liability for any loss or damage thereby occasioned.

15) TERMINATION

- The Company may by notice in writing to the Purchaser terminate any Contract immediately if the Purchaser:
 - commits any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of this or any other contract with the Company and on its part to be observed and performed;
 - has a receiving order against him or commits an act of bankruptcy or enters into a voluntary arrangement; or
 - being a Company, calls any meeting of its creditors or has a Receiver or Administrator appointed, or enters into any liquidation; or ceases or threatens to cease to carry on business.

- In the event of any such termination the Company shall in addition to exercising its rights to repossession of the Goods under Condition 10 of these Conditions be entitled by notice in writing to the Purchaser to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Purchaser to the Company under this or any other Contract.

- The provisions of (a) and (b) above and the exercise by the Company of its rights thereunder are without prejudice to any other rights of the Company.

16) VARIATIONS IN FINISH/PRODUCT DEVELOPMENT

- Whilst every effort is made to maintain continuity and consistency of the Goods, the manufacturing processes do not make it possible to guarantee a colour match from batch to batch. Any natural components in the Goods, will have inherent variations.
- As part of the Company's commitment to continuous product development, it reserves the right to change product specification, design and/or colour range, without prior notice.