

SALE OF BULBS: BUYERS' CONDITIONS

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1. INTERPRETATION

1.1 Definitions:

Agent	Spalding Auction Limited a company registered in England and Wales with registered company number [NUMBER] and whose registered address is at Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 3YR;
Agent's Premises	the location at which Bulbs are offered for sale being at Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 3YR;
Bulb Price	the price of the Bulbs calculated in accordance with clause 6.1 and clause 6.2;
Bulbs	shall mean the plant bulbs purchased by the Buyer pursuant to these Conditions;
Buyer	the person or firm who purchases Bulbs from the Vendor;
Buyer's Premium	a sum equal to 7.5% of the Bulb Price;
Commencement Date	has the meaning given to it in clause 4.3;
Conditions	the terms and conditions set out in this document;
Force Majeure Event	an event or circumstance beyond a party's reasonable control.
Order	the Buyer's order for Bulbs provided by the Buyer to the Agent;
Vendor	means the person, firm or company who submits Bulbs to be sold by the Agent;

1.2 Interpretation:

- 1.2.1 Except where the context otherwise requires: words denoting the singular include the plural and vice versa; words denoting one gender include all genders; and words denoting persons include corporations.
- 1.2.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **CONDITIONS OF PURCHASE**

2.1 All Buyers purchasing Bulbs do so on the understanding that they have read and understood these Conditions which have been made available as follows:

2.1.1 on the Agent's website: www.spaldingauction.co.uk

2.1.2 displayed at the Agent's Premises; and

2.1.3 on request from the Agent.

2.2 These Conditions are on the basis that the Buyer is acting wholly or mainly in the course of the Buyer's trade, business, craft or profession.

3. **AGENT'S STATUS**

3.1 The Agent sells as agents for the Vendor.

3.2 The parties to the contract of sale are the Vendor and the Buyer. The Agent shall have no liability, whatsoever, for any default by the Vendor.

4. **BASIS OF CONTRACT**

4.1 These Conditions apply to the contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

4.2 The Order constitutes an offer by the Buyer to purchase Bulbs in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.

4.3 The Order shall only be deemed to be accepted when the Agent accepts the Order, at which point the contract shall come into existence (**Commencement Date**).

4.4 Any samples, drawings, descriptive matter or advertising produced by the Agent are produced for the sole purpose of giving an approximate idea of Bulbs referred to in them. They shall not form part of the contract nor have any contractual force.

5. **DELIVERY, TITLE AND RISK**

5.1 In most cases, Bulbs are to be collected from the Agent's Premises by the Buyer, but at the Buyer's request the Agent can arrange delivery of Bulbs by courier, which shall be at the Buyer's cost and risk.

- 5.2 Delivery of Bulbs shall occur either on:
- 5.2.1 the collection of the Bulbs, by the Buyer or the Buyer's agent, from the Agent's Premises; or
 - 5.2.2 the loading of the Bulbs on to a courier's transport for delivery to the Buyer.
- 5.3 Risk in Bulbs shall pass on delivery.
- 5.4 Title in the Bulbs shall not pass to the Buyer until payment in full is received (in cash or in cleared funds) for the Bulbs.
- 5.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Agent shall not be liable for any delay in delivery of the Bulbs that is caused by a Force Majeure Event or the Buyer's failure to provide the Agent with adequate delivery instructions or any other instructions that are relevant to the supply of the Bulbs.

6. **PRICE AND PAYMENT**

- 6.1 The Bulb Price shall be the price set out in the Order, or, if no price is quoted, the price as published by the Agent as at the Commencement Date.
- 6.2 The Bulb Price:
- 6.2.1 excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Agent at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 6.2.2 excludes the costs and charges of packaging and, if applicable, transport of the Bulbs, which shall be invoiced to the Buyer.
- 6.3 In addition to the Bulb Price, the Buyer shall pay to the Agent the Buyer's Premium.
- 6.4 The Agent may invoice the Buyer for the Bulbs, being the Bulb Price together with the Buyer's Premium, at any time from the submission of an Order for the Bulbs by the Buyer.
- 6.5 The Buyer shall pay the invoice in full and in cleared funds within thirty (30) working days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Agent. Time for payment is of the essence.

6.6 The Buyer shall pay all amounts due under the contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Agent may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Agent to the Buyer.

7. REMEDIES FOR NON-PAYMENT OR FAILURE TO COLLECT BULBS

7.1 If any Bulbs are not paid for in full and removed from the Agent's Premises in accordance with these Conditions or if there is any other breach of these Conditions, the Agent, as agent for the Vendor and on their own behalf, shall in their absolute discretion and without prejudice to any other right or remedy it may have, be entitled to exercise one or more of the following rights and remedies:

7.1.1 to bring a claim against the Buyer for breach of contract;

7.1.2 to rescind the sale of the Bulbs sold by the Agent to the Buyer;

7.1.3 to resell the Bulbs in which case the Buyer shall be responsible for any resulting deficiency in the total amount due (after crediting any part payment and any additional any resale costs) and any surplus so arising shall belong to the Vendor;

7.1.4 to remove, store and insure the Bulbs at the Buyer's expense and, in the case of storage, either at the Agent's Premises or elsewhere;

7.1.5 to charge interest at a rate of 5% per annum over NatWest Bank's base rate on the total amount due to the extent that it remains unpaid for more than two (2) Business Days after the Commencement Date;

7.1.6 to retain any other Bulbs sold to the Buyer until the Buyer pays the total amount due;

7.1.7 to refuse Orders from the Buyer or the Buyer's agent, in the future or to impose conditions before any such Orders shall be accepted; and/or

7.1.8 to apply any proceeds of sale of other Bulbs due, or in the future become due, to towards the settlement of the total amount due and to exercise a lien (that is, a right to retain possession of) any Buyer's property in the Agent's possession until the debt is satisfied.

8. **QUALITY**

- 8.1 No warranty is given by the Agent or their servants or agents, or by any Vendor, to the Buyer in respect of the Bulbs. In particular, no warranty is given that Bulbs are free from pests and disease (which, for the avoidance of doubt includes the disease *Xylella Fastidiosa*).
- 8.2 Any express or implied conditions or warranties are excluded to the fullest extent permitted by law.

9. **TERMINATION**

- 9.1 Without limiting its other rights or remedies, the Agent may, on behalf of the Vendor, terminate the contract with immediate effect by giving notice to the Buyer if the Buyer:
- 9.1.1 fails to pay any amount due under the contract on the due date for payment; or
 - 9.1.2 commits a material breach of the contract.
- 9.2 For the purpose of this clause 9 **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Agent or Vendor would otherwise derive from a substantial portion of the contract.
- 9.3 On termination of the contract for any reason the Buyer shall immediately pay to the Agent all of the Agent's outstanding unpaid invoices and interest.
- 9.4 Termination of the contract shall not affect any of the Agent's rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the contract that existed at or before the date of termination.
- 9.5 Any provision of the contract that expressly or by implication is intended to come in to or continue in force on or after termination shall remain in full force and effect.

10. **LIMITATION OF LIABILITY**

- 10.1 This clause 10 sets out the entire financial liability of the Agent (including any liability for the acts or omissions of its respective employees, agents and subcontractors) for:
- 10.1.1 any breach of these Conditions however arising;
 - 10.1.2 any use made or resale of the Bulbs by the Buyer; and

- 10.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
- 10.2 Nothing in these Conditions shall limit or exclude the Agent's liability for:
 - 10.2.1 death or personal injury resulting from negligence;
 - 10.2.2 fraud or fraudulent misrepresentation; or
 - 10.2.3 any other liability which cannot be excluded or limited by applicable law.
- 10.3 Without prejudice to clause 10.2, the Agent shall not under any circumstances whatever be liable to the Buyer (or the Vendor), whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
 - 10.3.1 loss of profit;
 - 10.3.2 loss of goodwill;
 - 10.3.3 loss of business;
 - 10.3.4 loss of business opportunity;
 - 10.3.5 loss of anticipated saving; or
 - 10.3.6 special, indirect or consequential damage,suffered by any other party that arises under or in connection with these Conditions.
- 10.4 Without prejudice to clause 10.2 or clause 10.3, the Agent's total liability for all other losses arising under or in connection with these Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the price paid for the Bulbs by the Buyer.

11. **FORCE MAJEURE**

- 11.1 The Agent shall not be in breach of the contract nor liable for delay in performing, or failure to perform, any of its obligations under the contract if such delay or failure result from a Force Majeure Event.

12. **NOTICES**

- 12.1 Any notice given to a party under or in connection with the contract shall be in writing and shall be:

- 12.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 12.1.2 sent by email to:
 - 12.1.2.1 the Agent at MikeKnight@spaldingauction.co.uk
 - 12.1.2.2 to the Buyer at the address set out in the Order
- 12.2 Any notice shall be deemed to have been received:
 - 12.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 12.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service.
 - 12.2.3 if sent by email, at 9.00 am on the next working day after transmission.
- 12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13. **COMPLAINTS HANDLING PROCEDURE**

- 13.1 All complaints should initially be made in writing and addressed to the General Manager, Spalding Auction, Enterprise Way, Pinchbeck, Spalding, Lincolnshire PE11 37R.
- 13.2 If the Agent is unable to satisfactorily resolve the Buyer's complaint, the Buyer may refer it to the Royal Institute of Chartered Surveyors Dispute Resolution Service, contact details for which are available from the Agent on request.

14. **GENERAL**

- 14.1 A person who is not a party to a contractual relationship under these Conditions shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 14.2 No variation of the contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 14.3 The contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.4 Each party acknowledges that in entering into the contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the contract.
- 14.5 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the contract.
- 14.6 Nothing in these Conditions shall limit or exclude liability for fraud.
- 14.7 No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.8 If any provision or part-provision of the contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the contract.
- 14.9 The Agent may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the contract.
- 14.10 The Buyer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the contract.
- 14.11 The contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the contract or its subject matter or formation.