

# Phoenix Amenity Supplies Limited

## Terms and Conditions of Sale

### Introduction

These General Terms and Conditions of Sale (hereinafter referred to as the “Terms”) shall apply to all sales from Phoenix Amenity Supplies Limited (hereinafter referred to as “PHOENIX”) notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other communication from any buyer to PHOENIX (hereinafter referred to as the “Buyer”), unless otherwise agreed to in writing by PHOENIX. Each order by the Buyer to PHOENIX will be deemed to be an offer to purchase goods (as specified by the order) subject to these Terms (hereafter referred to as an “Order”). Once the Buyer has accepted the Terms, the Buyer shall also be deemed to have accepted that the Buyer’s future purchases from PHOENIX shall be subject to the Terms of any other terms of PHOENIX that may be in force from time to time. No such conflicting, contrary or additional terms and conditions shall be deemed accepted by PHOENIX unless and until PHOENIX expressly confirms PHOENIX’s acceptance in writing thereof.

When used in the Terms “writing” or “in writing” refers to a document signed by PHOENIX and the Buyer or to a letter or email.

**THE BUYER’S ATTENTION IS PARTICULARLY DRAWN TO THE PAYMENT, SHIPPING AND RETURNS POLICY AT CONDITIONS THREE (3), FIVE (5) AND SIX (6), AND THE EXCLUSIONS AND LIMITATIONS OF LIABILITY AT CONDITION ELEVEN (11) OF THESE TERMS.**

### 1. General

- 1.1 PHOENIX reserves the right to reject an order by the Buyer to purchase goods from PHOENIX without any liability to the Buyer.
- 1.2 Unless PHOENIX expressly in writing has accepted any other conditions, any sales contract is entered into on the terms and conditions appearing from PHOENIX’s order confirmation (if any) and the Terms.
- 1.3 The Terms shall include PHOENIX’s current price list and delivery schedule from time to time.
- 1.4 An Order will be accepted by PHOENIX and a contract will be formed subject to these Terms upon the earlier to occur of written acceptance by PHOENIX of the Order or PHOENIX doing any act consistent with fulfilling the Order.
- 1.5 The Order and these Terms shall constitute the entire agreement between the parties (“the Agreement”). A person who is not a party to the Agreement shall not have any rights to enforce its terms.
- 1.6 The Buyer acknowledges that in entering into the Agreement it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of PHOENIX which is not set out in these Terms.
- 1.7 No delay, act or omission by PHOENIX in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy. Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by PHOENIX.
- 1.8 If any provision or part-provision of these Terms 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 Agreement.
- 1.9 If any provision or part-provision of these Terms is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provisions so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves, the intended commercial result of the original provision.

### 2. Accuracy Warning

- 2.1 PHOENIX’s website and its components and any of its other sales, marketing literature, or user guides are offered for informational purposes only and PHOENIX shall not be responsible or liable for the accuracy, usefulness or availability of any information transmitted or made available by PHOENIX, and shall not be responsible or liable for any error or omissions in that information.

### 3. Payment Policy

- 3.1 The price to be paid by the Buyer to PHOENIX for the Order shall be confirmed by PHOENIX or where no such confirmation is issued the price shall be calculated in accordance with PHOENIX’s current pricing list from time to time. The prices quoted are exclusive of VAT and other taxes, delivery and import costs and packaging (if any) which shall be charged separately.
- 3.2 Payments for accounts are due in full and cleared funds within 30 days of an invoice being submitted by PHOENIX to the Buyer.
- 3.3 Payments for all other non-account orders are due in full and cleared funds upon PHOENIX issuing an invoice to the Buyer.
- 3.4 Time for payment of an invoice shall be of the essence and if no payment is received, no items will be shipped.
- 3.5 PHOENIX may from time to time apply a credit limit to the Buyer’s account and PHOENIX reserves the right to reject any Orders where the credit limit is exceeded.
- 3.6 Acceptable payment methods include BACS, Credit Card, Debit Card and shall be processed as follows:
  - 3.6.1 Bill payments shall be processed immediately;
  - 3.6.2 BACS payments may take 2-3 working days;
  - 3.6.3 Card payments will be processed by mail order.
- 3.7 The Goods shall remain the property of PHOENIX until paid for in full, including interest and other costs, to the extent that such retention of title is valid under applicable law.
- 3.8 On condition that PHOENIX can identify the Goods, PHOENIX shall have the right to enter the Buyer’s premises to take back the Goods as soon as the date of payment for Goods has passed.

- 3.9 If the Buyer fails to make any payment due to PHOENIX under the Agreement by the due date for payment, then the Buyer shall pay to PHOENIX the cost of collection, including reminder fee, plus interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Buyer shall pay the interest together with the overdue amount.
- 3.10 If the Buyer fails to fulfil one or more of its payment obligations to PHOENIX, PHOENIX's obligations under this Agreement will automatically and immediately be suspended until the Buyer has paid all amounts due (including payment of any extrajudicial costs) and/or PHOENIX shall have the right to cancel any Order or any relevant account of the Buyer.
- 3.11 If the Buyer is liquidated, declared bankrupt or granted a suspension of payments, the Buyer's payment obligations under this clause 3 will fall due immediately and PHOENIX will be entitled to suspend the further performance of the Agreement or to declare the Agreement terminated without prejudice to PHOENIX's right to claim damages. If payment in instalments has been agreed, the entire amount will fall due immediately without notice of default being required in the event of late payment of an instalment.
- 3.12 All payments owed to PHOENIX by the Buyer shall be made without any set off, counterclaim, withholding or deduction whatsoever, save as may be required by law.

#### **4. Title and Risk**

- 4.1 Title to the Goods shall pass to the Buyer when the Goods are paid for in full and the Buyer has accepted delivery of the Goods.
- 4.2 Risk in the Goods shall pass to the Buyer when PHOENIX passes the Goods to the delivery service for delivery or if no third party delivery service is used when PHOENIX makes the Goods available for delivery.
- 4.3 Loss or damage to the Goods after risk has passed does not discharge the Buyer from its obligation to pay PHOENIX for the Goods unless the loss or damage to the Goods is proven to be caused by PHOENIX's act or omission.

#### **5. Shipping Policy**

- 5.1 Incoterms® EXWorks published by the International Chamber of Commerce from time to time are used; the definitions that are in force at the date of conclusion of the Agreement shall apply. To the extent that Incoterms® are not consistent with the terms of the Agreement, the terms of the Agreement shall prevail.
- 5.2 Costs of delivery and shipping will be paid for by the Buyer in the amount agreed upon by PHOENIX at the time of Order.
- 5.3 PHOENIX reserves the right to use third party delivery services. In the event that such a service is used PHOENIX is absolved of responsibility for or liability of the Goods being shipped from the moment the third party delivery service takes possession over the Goods. Any Goods delivered in a condition not agreed in writing by PHOENIX upon collection by any third party delivery service shall not be the fault of PHOENIX, nor shall PHOENIX be liable to compensate the Buyer.
- 5.4 The delivery date shall be in accordance with PHOENIX's delivery schedule in force from time to time however any such dates are given by PHOENIX as estimates only and PHOENIX will accept no liability arising from early or late delivery.
- 5.5 Unless otherwise agreed by PHOENIX in writing, delivery of the goods shall be completed on the Goods' arrival at the agreed delivery location (where PHOENIX completes the delivery) or when PHOENIX hands over the Goods to any third party delivery service.
- 5.6 PHOENIX may withhold delivery until all outstanding payments under any agreement with PHOENIX have been made by the Buyer.
- 5.7 The Buyer undertakes to comply with applicable laws and regulations of the country for which the goods are destined including all import regulations and where an import permit is required the Buyer will send the import permit to PHOENIX 30 days in advance of delivery. PHOENIX will not be liable or responsible if the Buyer is in breach of this clause 5.7.
- 5.8 If the Buyer fails to take or accept delivery of the Goods (as the case may be) within 3 days of PHOENIX notifying the Buyer that the Goods are ready, then: delivery of the Goods shall be deemed to have been completed at 9.00am on the third day after the day on which PHOENIX notified the Buyer that the Goods were ready; and PHOENIX shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses incurred by PHOENIX in respect of the storage of the Goods.

#### **6. Refund/Return Policy**

- 6.1 The Buyer must inspect the Goods immediately on receipt and must within 3 days of delivery of the Goods give written notice to PHOENIX of any defect in quantity, quality or condition apparent on reasonable inspection. Any such defect that is not apparent from a reasonable inspection must be notified to PHOENIX in writing and as soon as reasonably practicable. If the Buyer fails to give such notice and confirmation in the time stated the Goods shall be deemed to accord with the Agreement and the buyer shall be bound to accept and pay for them.
- 6.2 Where the Buyer provides notice to Phoenix under clause 6.1 such notice must provide a reasonable explanation of why the Buyer considers the Goods to be unsatisfactory and PHOENIX reserves the right to inspect the Goods and any land or premises where the Goods are being kept.
- 6.3 Items are entitled to be refunded, returned or exchanged based on a complaint being accepted by PHOENIX and will be considered on a case-by-case basis.
- 6.4 PHOENIX shall not be liable for the Goods in the following circumstances:
  - 6.4.1 The Buyer makes further use of the Goods after given notice under clause 6.1;
  - 6.4.2 The defect arises because the buyer failed to follow PHOENIX's instructions as to the storage, use and maintenance of the Goods or (if there are none) good industry practice regarding the same;
  - 6.4.3 The defect arises as a result of PHOENIX following any specification of the Buyer;
  - 6.4.4 The Buyer alters or multiplies the Goods;
  - 6.4.5 The defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions;

6.4.6 The Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

## **7. Certificates**

7.1 Any official seed testing reports shall be final in accordance with ISF Rules, Section XXVI, Quality Control, Article 66, including but not limited to in relation to its date, quality of seed and official classification.

## **8. Multiplication**

8.1 Multiplication of seed supplied to the Buyer by PHOENIX is not permitted.

8.2 Where the Buyer adopts the practice of multiplying seed PHOENIX shall have no liability to the Buyer whatsoever in respect of the Goods, including any such seed.

8.3 The Buyer shall indemnify PHOENIX and keep PHOENIX indemnified against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest penalties and legal and other reasonable professional costs and expenses) suffered or incurred by PHOENIX arising out of or in connection with any claim made against PHOENIX by any third party including any claim arising out of the Buyers use of the Goods (including but not being limited to any altering, multiplication or onward supply of the Goods).

## **9. Force Majeure**

9.1 PHOENIX will not be responsible for delay in delivery of the Goods or any part thereof nor the Buyer for delay in accepting or taking delivery of the Goods occasioned by any event beyond the reasonable control of the parties, including but not limited to acts of God, legal requirements, strike, failure of transport, machinery or power, adverse weather or failure or disease of crops, provided that written notice is given to the other party to the contract within 7 days of the defaulting party's knowledge of the occurrence.

9.2 Any agreement for the sale of Goods which is entered into with PHOENIX pre-harvest is subject to a safe crop and where PHOENIX is unable to fulfil an agreement as a result of a safe crop not being harvested it shall have no liability to the Buyer whatsoever.

9.3 PHOENIX shall have the right to substitute any Goods with similar goods when due to crop failure, or the inability within reasonable limits, PHOENIX is unable to supply the Goods sold in the necessary amounts and/or quality.

## **10. Cancellation/Termination Clause**

10.1 If the Buyer cancels in part or as a whole any Order that has been accepted by PHOENIX then the Buyer shall be liable to pay PHOENIX a fair estimate of the likely loss to PHOENIX arising out of the cancellation and any loss actually incurred by PHOENIX arising out of the Buyer's cancellation of the Order including but not being limited to the full price of the Order.

10.2 Subject to clause 10.1 the Buyer may cancel an Order at any time in writing to PHOENIX up to the end of the fifth business day from the date of delivery of the goods provided that the Goods have not been opened, used and are in a resalable condition including being sound, sufficiently dry, without bad odour, unadulterated and marketable.

10.3 If the Buyer cancels an Order after delivery of the Goods, the Buyer must send the Goods back to PHOENIX at its own cost and expense. The Buyer must take reasonable care of the Goods and shall remain liable for the Goods, including for their accidental loss or destruction, until delivery of the goods back to PHOENIX. Where the Buyer does not return the Goods to PHOENIX in accordance with this clause 10, PHOENIX reserves the right to reject any cancellation.

10.4 PHOENIX shall reimburse the Buyer of any sums paid by the Buyer for the Goods as soon as possible and in any event within 30 days of the later of receipt of cancellation of the Order and the return of the Goods to PHOENIX in accordance with clause 10.3 above, less any costs incurred by PHOENIX arising out of the cancellation.

10.5 PHOENIX reserves the right to terminate any Order and/or any Buyer's account with the Buyer, without cause or notice, which may result in the forfeiture and destruction of all information associated with the Buyer's account.

10.6 On termination of an Order and or any Buyer's account all the sums owed by the Buyer to PHOENIX will become immediately due and payable to PHOENIX.

10.7 All provisions of these Terms that, by their nature, should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

## **11. Limitation of Liability**

11.1 PHOENIX shall not be liable to the buyer for any indirect, special, incidental or consequential loss or damage or punitive damages of any nature, including, but not limited to, business interruption costs, loss of production/growth, loss of contracts, loss of profit, injury to reputation or loss of customers, or for any other consequential or indirect loss whatsoever.

11.2 Notwithstanding clause 11.1 above PHOENIX shall not be liable to the buyer for any loss or damage incurred by the Buyer as a result of the use of the Goods supplied to the Buyer or the condition of any fields or land where the Goods are used.

11.3 These limitations of liability apply for all liabilities, including but not limited to liability for delay, defects and product liability.

11.4 The total aggregate liability of PHOENIX shall not exceed the amount paid to PHOENIX for the Order giving rise to the claim, but PHOENIX shall in no circumstances have more than a total aggregate liability of PHOENIX of GBP £75,000 irrespective of the nature of the claim(s), whether in contract, tort, warranty or otherwise.

11.5 PHOENIX shall be discharged from all liability to the Buyer whatsoever and howsoever arising, in respect of an Order unless proceedings are commenced against PHOENIX within the date of one year of the date of the relevant Order to which the claim relates.

11.6 Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence or fraud or fraudulent misrepresentation.

**12. Complaints**

- 12.1 Any complaints about our goods or services may be sent to PHOENIX's support team: [sales@phoenixamenity.co.uk](mailto:sales@phoenixamenity.co.uk) or 01684 212020.
- 12.2 Any dispute between the parties may be referred to any relevant professional body; to the extent that any terms of this Agreement are not consistent with any relevant professional body Rules for Dispute Settlement the terms of this Agreement shall prevail.

**13. Law**

- 13.1 The construction, validity and performance to which these Terms apply and any non-contractual obligations arising out of or in connection with it shall be governed by English Law. Each party agrees that the courts of England have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).

**14. Insurance**

- 14.1 During this Agreement the Buyer shall maintain in force any such insurances required by good industry practice with a reputable insurance company including (but not being limited to) insurance against claims for damage arising from non-performance of the Goods through an Errors and Omission Insurance Scheme.