

TERMS AND CONDITIONS OF SALE AND CONTRACT TREE AND HEDGE SUPPLY, INSTALLATION AND TRANSPLANTING

1. Interpretation
 - 1.1 In these Conditions
'CLIENT' means the person who accepts a quotation of PBL for the supply, installation or transplanting of trees or other plant stock or goods.
'GOODS' means the goods (including any installation of the goods or any parts for them) which PBL is to supply in accordance with these Conditions.
'PBL' means **PRACTICALITY BROWN LIMITED** (registered in England and Wales under number 2114017).
'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and PBL.
'CONTRACT' means the contract for the supply, installation and/or transplanting of trees or other plant stock.
'WRITING' includes telex, cable, facsimile transmission and comparable means of communication.
 - 1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
 - 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
2. Basis of the supply
 - 2.1 PBL shall supply and install trees or other plant stock and/or transplant clients own trees on site in accordance with any written quotation of PBL which is accepted by the Client, or any written order of the Client which is accepted by PBL, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Client.
 - 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Client and PBL.
 - 2.3 PBL's employees or agents are not authorised to make any representations concerning the trees or any other aspect of the work unless confirmed by PBL in Writing. In entering into the Contract the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
 - 2.4 Unless stated otherwise on the quotation, all quoted prices do not include for any specific pit preparation, the provision or installation of topsoil, removal of spoil off site, assessing or providing drainage, locating services, liaising with or obtaining permits to work from statutory bodies, traffic management, standing time in relation to delays on site or any ground reinstatement work.
 - 2.5 PBL will hire machinery and experienced operators at the rates set out on PBL's standard price list or as agreed in advance with the Client.
 - 2.6 Adequate access to the work area(s) should be agreed and prepared as necessary prior to PBL's commencement on site by PBL's client. Any additional costs incurred as a result of inadequate or delayed access such as aborted visits to site, delivery, machine hire and labour costs will remain the Client's responsibility to pay.
 - 2.7 A reliable source of mains pressure water with adequate length of hose to reach the work area(s) should be freely available to PBL's staff.
 - 2.8 Any tyre punctures that become apparent on site are the responsibility of the hirer and any resultant downtime whilst repairing the puncture is also the hirer's responsibility. PBL will call out a tyre company to fix the puncture and the cost will be added to the next account to be submitted to the client.
 - 2.9 PBL's machine operator reserves the right to refuse to negotiate terrain that they consider to be detrimental to the machine's safety or to lift trees that he considers could endanger PBL's machine or other property. Any resultant downtime as a result of PBL's operator's decision will remain the Client's responsibility to pay.
 - 2.10 Trees to be moved and receiving holes to be dug or positions where new trees are to be planted should be clearly marked by PBL's client using marking paint and an assurance that no services run within five metres of a tree pit should be given to PBL's operator prior to commencement on site. No responsibility can be taken for trees moved in error or planted in the wrong position if clear marking has not been carried out by PBL's client or their agent. PBL can take no responsibility for any damage caused to any underground services, overhead services or other obstacles.
 - 2.11 When ground conditions are hard PBL recommends that the client waters the trees and receiving holes well before tree moving commences on site. This will enable more trees to be moved per day and is usually very cost effective (relevant to use of Tree Spade Machine only).
 - 2.12 Unless PBL has been contracted in advance to carry out guying of trees, PBL can take no responsibility for any trees that suffer wind damage or move after planting. Where guying is carried out by PBL, PBL will take care to ensure that guying is adequate to support the tree in question but cannot take responsibility for any tree that breaks its guy or requires stronger guying.
 - 2.13 Unless an installation and a comprehensive 2 year maintenance and guarantee contract is taken out with PBL prior to commencement on site PBL cannot guarantee the survival of any trees supplied or moved. PBL will however give recommendations regarding the required maintenance operations to minimise losses on request.
3. Orders and specifications
 - 3.1 The Client shall be responsible to PBL for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client, and for giving PBL any necessary information relating to the trees within a sufficient time to enable PBL to perform the Contract in accordance with its terms.
 - 3.2 No order which has been accepted by PBL may be cancelled by the Client except with the agreement in Writing of PBL and on terms that the Client shall indemnify PBL in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by PBL as a result of cancellation.
4. Price of the goods
 - 4.1 The price shall be PBL's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in PBL's published price list current at the date of acceptance of the order.
 - 4.2 PBL reserves the right, by giving notice to the Client at any time before delivery, to increase the price of the goods to reflect any increase in the cost to PBL which is due to any factor beyond the control of PBL (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the goods which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give PBL adequate information or instructions.
5. Terms of Payment
 - 5.1 Unless otherwise agreed in Writing payment shall be made in cleared funds in advance or on delivery.
 - 5.2 PBL may in its absolute discretion agree to open a credit account for a Client on the basis of references provided. If such an account is opened the Client shall pay the price of the Goods within 30 days of the date of PBL's invoice, notwithstanding that delivery may not have taken place and the property in the goods has not passed to the Client. The time of payment of the price shall be of the essence of the Contract.
 - 5.3 Receipts for payment will be issued only upon request.
 - 5.4 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to PBL, PBL shall be entitled to:
 - 5.4.1 cancel the contract or suspend any further deliveries to the Client;
 - 5.4.2 appropriate any payment made by the Client under this Contract (or the good supplied under any other contract between the Client and PBL) as PBL may think fit (notwithstanding any purported appropriation by the Client); and
 - 5.4.3 charge the Client interest (both before and after any judgment) on the amount unpaid, at the rate of 3% per cent per annum above National Westminster Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
6. Risk and property
 - 6.1 Risk of damage to or loss of the goods shall pass to the Client at the time of delivery or, if the Client wrongfully fails to take delivery of the goods the time when PBL has tendered delivery of same.
 - 6.2 Notwithstanding the supply, delivery and installation of the goods, the passing of risk in them, or any other provision of these Conditions, the property in the goods shall not pass to the Client until PBL has received in cash or cleared funds payment in full of the price.
 - 6.3 Until such time as the property in the goods passes to the Client, the Client shall hold the Goods as PBL's fiduciary agent and bailee, and shall keep them separate from those of the Client and properly protected and insured and identified as PBL's property.
7. Liability
 - 7.1 Subject as expressly provided in these Conditions, and except where this Contract is made with 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 law.
 - 7.2 Any claim by the Client which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Client) be notified to PBL within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Client does not notify PBL accordingly, the Client shall not be entitled to reject the goods and PBL shall have no liability for such defect or failure, and the Client shall be bound to pay the price as if the goods had been delivered in accordance with the Contract.
 - 7.3 Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to PBL in accordance with these Conditions, PBL shall be entitled to replace the goods (or the part in question) free of charge or, at PBL's sole discretion, refund to the Client the price of the goods (or a proportionate part of the price), but PBL shall have no further liability to the Client.
 - 7.4 Except in respect of death or personal injury caused by PBL's negligence, PBL shall not be liable to the Client 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, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of PBL, its employees or agents or otherwise) which arise out of or in connection with the supply and installation of the goods for their use or resale by the Client, except as expressly provided in these Conditions.
 - 7.5 PBL shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of PBL's obligations if the delay or failure was due to any cause beyond PBL's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond PBL's reasonable control:
 - 7.5.1 Act of God, explosion, flood, tempest, fire or accident;
 - 7.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 7.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.
 - 7.5.4 import or export regulations or embargoes;
 - 7.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of PBL or of a third party);
 - 7.5.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 7.5.7 power failure or breakdown in machinery
8. Insolvency of Client
 - 8.1 This clause applies if:
 - 8.1.1 the client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 8.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
 - 8.1.3 the Client ceases, or threatens to cease, to carry on business; or
 - 8.1.4 PBL reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.
 - 8.2 If this clause applies, then, without prejudice to any other right or remedy available to PBL, PBL shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Client, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
9. General
 - 9.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
 - 9.2 No waiver by PBL of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
 - 9.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
 - 9.4 The contract shall be governed by the laws of England.