

GREENS FARMING LIMITED
CONDITIONS OF SALE FOR FIRST YEAR SETS

1. INTERPRETATION:

In these Conditions

- 1.1. "Seller" means Greens Farming Limited of Mettleham Farm Centre, Hasse Road, Soham, Ely, Cambs, CB7 5UW.
- 1.2 "Buyer" means the person, firm or company who accepts a quotation of the Seller for the sale of the Onion Sets and whose order for the Onion Sets is accepted by the Seller
- 1.3 "Destination" means the point of delivery specified by the Buyer and agreed by the Seller.
- 1.4 "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 Buyer and Seller.
- 1.5 "Contract" means the contract between the Seller and the Buyer for the supply of the Onion Sets which incorporates these Conditions.
- 1.6 "Writing" includes letter, facsimile and email transmission.
- 1.7 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.
- 1.8 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.9 "Working Day" excludes Saturdays, Sundays, statutory and Bank Holidays and holidays by Royal Proclamation. For the purpose of any time limit in these Conditions if the last day falls on a day other than a Working Day the limit shall be extended until the first Working Day following.
- 1.10 "Certificate" means a certificate issued by Vegetable Consultancy Services confirming compliance with Vegetable Consultancy Services Quality Assurance Scheme for Onion Sets.
- 1.11 "Onion Sets" means the onion sets and any other goods agreed in the Contract to be supplied to the Buyer by the Seller (including any parts of them).

2. BASIS OF SALE

THE BUYER'S ATTENTION IS SPECIFICALLY DRAWN TO CLAUSE 8 TO 11 INCLUSIVE REGARDING THE SELLER'S LIABILITY

- 2.1 All prices quoted by the Seller are based upon these Conditions only and reflect the limitations upon the Seller's liability which they contain. Should any Buyer wish to contract with the Seller otherwise than on the terms of such Conditions, special arrangements must be made prior to sale and incorporated in the terms of the Contract.
- 2.2 In the absence of any such special arrangements (which shall not bind the Seller unless made in Writing and signed on the Seller's behalf by a person duly authorised for that purpose) all quotations given and all contracts made by the Seller and any additions or amendments thereto shall be subject to these Conditions which supersede and shall be taken to override any terms or conditions proposed or stipulated by the Buyer.
- 2.3 Quotations are given subject to the Onion Sets being unsold on receipt of order.
- 2.4 No person may enforce any terms of the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999
- 2.5 The Seller's employees or agents are not authorised to make any representation concerning the Onion Sets unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. TITLE

The implied terms as to title set out in Section 12 of The Sale of Goods Act 1979 (as varied, where relevant, by the Sale and Supply of Goods Act 1994) shall be express terms of the Contract.

4. PROTECTION

Notwithstanding the provisions of Condition 7 in relation to the passing of risk and property the Seller shall make reasonable arrangements for protecting the goods from damage at the loading point and during transport.

5. QUALITY

The Onion Sets will comply at the time of delivery with the Vegetable Consultancy Services Quality Assurance Scheme for Onion Sets

6. DELIVERY

6.1 Delivery terms

- 6.1.1 Delivery is complete as soon as the Seller complies with the terms of delivery stated. The Seller shall have the right to make delivery by instalments and in the event of its doing so each instalment shall stand as a separate contract and failure to make any instalment delivery shall not entitle the Buyer to repudiate the Contract.
- 6.1.2 In the event of the Onion Sets being sold for delivery within a specified period the Buyer must give the Seller all necessary loading instructions not less than seven days before the start of the specified period.
- 6.1.3 Without prejudice to Condition 14 below, for a reasonable period, loading and delivery may be postponed by the Seller owing to adverse weather conditions.
- 6.1.4 Any time or date for the despatch or delivery of the Onion Sets given or made by the Seller shall be taken as an estimate made by the Seller in good faith, but the time and date may be varied if loading schedules are affected by adverse weather or other events beyond the Seller's control.
- 6.1.5 Time of the delivery is not of the essence of the Contract.
- 6.2 The Seller shall not be liable for any loss or damage, however sustained, to a consignment or part of a consignment or from a package or container, or for any shortfall in the number of containers supplied, if such loss or damage is caused in transit unless:
 - (a) the Seller is notified of the Buyer's claim within three days of the arrival of the Onion Sets at the Destination otherwise than upon a consignment note or delivery note at the time of delivery; PROVIDED THAT in the case of 6.2 (a) above, if the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the said period and such notice was given within a reasonable period the Seller shall not be entitled to rely upon the said time limit.

7. PASSING OF RISK AND PROPERTY.

- 7.1 The risk of any loss or damage to or deterioration of the Onion Sets shall pass to the Buyer at the earliest of:
 - 7.1.1 the first delivery of the Onion Sets to the Destination; or
 - 7.1.2 the collection of the Onion Sets by the Buyer's transport, or transport arranged by the Buyer or by the Seller as the Buyer's agent; or
 - 7.1.3 the date when the Buyer has failed or refused to take delivery (or collect) the Onion Sets if such be the case.
- 7.2 Title in the Onion Sets shall remain with the Seller until the Seller has received in full all sums due to it in respect of the Onion Sets and all other sums which are or which become due to the Seller from the Buyer on any account.
- 7.3 Until title in the Onion Sets has passed to the Buyer in accordance with Condition 7.2, the Buyer shall:
 - 7.3.1 hold the Onion Sets on a fiduciary basis as the Seller's bailee;
 - 7.3.2 store the Onion Sets (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Onion Sets; and
 - 7.3.4 maintain the Onion Sets in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller and on request the Buyer shall produce the policy of insurance to the Seller.
- 7.4 The Buyer may resell the Onion Sets before title has passed to it solely on the following conditions:
 - 7.4.1 any such sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 7.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.5 The Buyer's right to possession of the Onion Sets shall terminate immediately if:
 - 7.5.1 the Buyer has a bankruptcy order made against it or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in

- force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - 7.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 7.5.3 the Buyer encumbers or in any way charges any of the Onion Sets.
 - 7.6 The Seller shall be entitled to recover payment for the Onion Sets notwithstanding that title in the Onion Sets has not passed from the Seller.
 - 7.7 The Buyer hereby grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Onion Sets are or may be stored in order to inspect them, or where the Buyer's right to possession has terminated, to recover them.
 - 7.8 Where the Seller is unable to determine whether any goods are the Onion Sets in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Onion Sets sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
 - 7.9 On termination of the Contract, howsoever caused, the Seller (but not the Buyer's) rights contained in this Condition 7 shall remain in effect.
- 8. LIABILITY FOR PATENT DEFECTS.**
- 8.1 This Condition 8 is without prejudice to Condition 5 and applies to any disease, pest, damage or defect whatsoever that is discoverable by reasonable inspection at the time of the arrival of the Onion Sets at their Destination or shortly thereafter ("Patent Defects").
 - 8.2 THE SELLER SHALL BE DISCHARGED FROM ALL LIABILITY, AND THE BUYER SHALL HAVE NO CLAIM IN RESPECT OF PATENT DEFECTS UNLESS:
 - 8.2.1. NOTIFICATION OF REJECTION, CLAIM OR COMPLAINT IS MADE TO THE SELLER GIVING A STATEMENT OF THE GROUNDS FOR SUCH REJECTION, CLAIM OR COMPLAINT IMMEDIATELY UPON DISCOVERY AND IN ANY EVENT WITHIN THREE DAYS AFTER THE ARRIVAL OF THE ONION SETS AT THE DESTINATION, AND
 - 8.2.2. THE SELLER IS GIVEN AN OPPORTUNITY TO INSPECT THE ONION SETS PROVIDED THAT THE ONION SETS SHALL HAVE BEEN PROPERLY STORED DURING THE PERIOD AFTER THEIR ARRIVAL AT THE DESTINATION AND THE IDENTITY OF THE ONION SETS CANNOT BE CONTESTED.
 - 8.2.3. If the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the appropriate period and notice was given within a reasonable period the Seller shall not be entitled to rely upon the time limits stipulated in this Condition.
 - 8.3 Unless otherwise agreed, the Seller's liability under this Condition 8 shall be limited to replacing or refunding the value of any Onion Sets properly rejected by the Buyer in accordance with these Conditions.
 - 8.4 Without prejudice to the rights of either the Seller or the Buyer under this Condition, any Buyer who wishes to reject the Onion Sets shall, if requested to do so by the Seller, unload the Onion Sets and store them properly either overnight or for such longer period as may reasonably be requested by the Seller pending resolution of the parties rights pursuant to these Conditions.
- 9. LATENT DEFECTS**
- 9.1 This Condition 9 applies to any disease, pest, damage or defect whatsoever that is NOT discoverable by reasonable inspection at the time of the arrival of the Onion Sets at their Destination nor within three days thereof ("Latent Defects").
 - 9.2 Because the Seller has relied on the Vegetable Consultancy Services Quality Assurance Scheme for Onion Sets in entering into the Contract, the Contract is based on the associated Certificate and the Seller's prices are based upon and reflect inter alia the limitation of liability contained in this Condition.
 - 9.3 IT IS SPECIALLY PROVIDED AND AGREED THAT IN NO CASE WHATSOEVER SHALL THE SELLER BE LIABLE FOR LATENT DEFECTS.
- 10. EXCLUSION OF LIABILITY**
- 10.1 Save as stated in these Conditions all express or implied terms, conditions and warranties statutory or otherwise are hereby expressly excluded from the Contract.
 - 10.2 Nothing in these Conditions shall affect any liability which the Seller may incur for death or personal injury resulting from negligence or any other liability which may not be limited or excluded at law.
- 11. COMPENSATION AND DAMAGES.**
- 11.1 Subject to Conditions 10.2 and 11.2, it is specially provided and agreed that compensation and damages payable under any claim or claims arising out of the Contract shall not in any circumstances amount in aggregate to more than the Contract price of the Onion Sets forming the subject of the claim or claims.
 - 11.2 Subject to Condition 10.2, the Seller shall not be liable in any manner whatsoever for any indirect or consequential loss, damage or injury howsoever caused which may arise out of or in connection with the sale of the Onion sets.
- 12. PAYMENT**
- The Seller reserves the right to require payment at any time before or after delivery to the Destination and to raise interest on overdue accounts. The Seller's payment and credit terms are stated in the Contract.
- 13. ASSIGNMENT**
- The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.
- 14. FORCE MAJEURE**
- The Seller and the Buyer shall be relieved of all or any of their obligations under the Contract to the extent that performance of such obligations is prevented, frustrated, impeded or delayed in consequence of any statute, regulation, rule, order or instruction of any Government, or other authority or any strike, lock-out or trade dispute (whether involving the Seller's employees or other parties) or civil commotion or any other cause, whether or not of a like or similar nature, beyond the Seller's or Buyer's reasonable control.
- 15. CANCELLATION OR SUSPENSION BY THE SELLER**
- 15.1 This Condition 15 applies if:
 - 15.1.1 the Buyer makes any voluntary arrangement with its creditors or being an individual or firm becomes bankrupt or being a company becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 15.1.2 an encumbrancer takes possession, or a receiver is appointed of any property or assets of the Buyer; or
 - 15.1.3 the Buyer ceases or threatens to cease to carry on business; or
 - 15.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
 - 15.1.5 there is a change of control of the Buyer; or
 - 15.1.6 the Buyer fails to make any payment to the Seller as it becomes due.
 - 15.2 If this Condition applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer and if the Onion Sets have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 16. LAW AND JURISDICTION**
- 16.1 The formation, existence, construction, performance validity and all aspects of the Contract shall be governed by English law.
 - 16.2 The parties hereby submit to the exclusive jurisdiction of the English courts.
- 17. GENERAL.**
- If any provision of the terms 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 terms and the remainder of the provision in question shall not be affected.