

# Optigreen Limited: Terms and Conditions of Sale

The Customer's attention is drawn in particular to the provisions of clause 9.

## 1. Interpretation

### 1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Force Majeure Event:** has the meaning given in clause 10.

**Goods:** the goods (or any part of them) set out in the Order.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation.

**Specification:** any specification for the Goods, including any related plans and drawings that are agreed in writing by the Customer and the Supplier.

**Supplier:** Optigreen Limited (registered in England and Wales with company number 06868686).

### 1.2 Construction. In these Conditions, the following rules apply:

- a. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b. A reference to a party includes its personal representatives, successors or permitted assigns.
- c. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- d. 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.

e. A reference to **writing** or **written** includes faxes and e-mails.

## 2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Nothing in these Conditions shall exclude the liability of either party for fraudulent misrepresentation.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures, products lists quotation, and/or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 90 days from its date of issue.

## 3. Goods

- 3.1 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.2 The Supplier reserves the right to amend the specification of the Goods or Specification if required by any applicable statutory or regulatory requirements or due to technological improvements.

## 4. Delivery

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery**

- Location)** at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates or times quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay or further delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions (including but not limited to the requirements set out in clause 4.11) that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions (including but not limited to the requirements set out in clause 4.11) or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take or accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- a. delivery of the Goods shall be deemed to have been completed on the day delivery was attempted; and
  - b. the Supplier shall store the Goods until re-delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which the Supplier attempted to deliver the Goods the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage (such costs to be charged from the date delivery was first attempted) and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, save that in respect of bulk goods (such as substrate/soil) whose weight is subject to fluctuations, the Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 8% more or less than the quantity of Goods ordered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 The Goods packaging forms part of the Goods and becomes the property of the Customer on delivery. The Supplier has no obligation to remove or dispose of any packaging supplied with the Order.
- 4.11 **Delivery and unloading**
- a. The Customer shall supply the exact address for the Delivery Location at least 5 clear days before the estimated delivery date unless otherwise stipulated by the Supplier, to include the street details, entrance gate, surrounding area as well as directions, and telephone number of the Customer for the delivery location and such other details as the Supplier shall require;
  - b. The Customer is solely responsible for ensuring that the Supplier is able to make delivery to the Delivery Location and that the Customer is available to accept delivery at the Delivery Location on the estimated delivery date;
  - c. The Customer is solely responsible for ensuring that there is a platform for unloading of the Goods to take place, which is fixed, flat, of the appropriate size and dimensions (for the type of Goods and their weight) and clear of all vehicles;
  - d. The Customer is solely responsible for ensuring that at the Delivery Location there is a clearance of at least 14m with no overhead power cables and sufficient space for an articulated lorry to park and unload the Goods;
  - e. The Customer must sign the freight documentation to confirm that the delivery has taken place. If the Customer refuses to sign the delivery document, this will be taken as a refusal to accept the delivery and clauses 4.6 and 4.7 shall apply; and
  - f. The delivery agents will not unload, unpack or install the Goods and it is the Customer's sole responsibility to arrange for the Goods to be unloaded. The Customer must unload the Goods using a forklift truck unless otherwise previously agreed by the Supplier in writing.
5. **Quality**
- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- a. Subject to 5.4, conform in all material respects with their description and any applicable Specification;
  - b. in the case of non-living Goods be free from material defects in design, material and workmanship;
  - c. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - d. be fit for any purpose held out by the Supplier in the Order.
- 5.2 Subject to clause 5.3, if:
- a. the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - b. the Supplier is given a reasonable opportunity of examining such Goods; and
  - c. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, except where the Goods are located at a different address to the address delivered, in which case the return will be at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- a. the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
  - b. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - c. the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - d. the Customer alters or repairs such Goods without the written consent of the Supplier;
  - e. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
  - f. the defect arose in transport of the Goods and the customer did not examine the Goods immediately for transport damage and any damage was not recorded at the time on the freight documentation;
  - g. the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
  - h. the Customer did not examine immediately on delivery of the Goods for any damage or obvious defect and any damage or obvious defect was not recorded at the time on the freight documentation;
  - i. in the case of any natural, planted or green roof, which is a live, natural produce, then the Supplier will not be liable or responsible to the extent for any reason that it does not grow or survive.

5.4 Given that many Goods supplied by the Supplier are made of natural materials, these Goods will not be an exact match with those shown in any descriptions or illustrations contained in the Supplier's catalogues, brochures, products lists quotation, and/or website or otherwise (together the **Promotional Materials**), are provided as a general guide, and are for illustrative purposes only, and the colour, wood grain, shape, dimensions, materials, weights and other particulars of the materials that the Supplier supplies and/or their component parts, may vary slightly from time to time from those shown in the Promotional Materials, but will conform to the overall specifications referred to in the Order. Without prejudice to the Suppliers obligations in clause 5.1, the Supplier reserves the right from time to time, to substitute the Goods shown or referred to in the Promotional Materials, with Goods of a similar kind, visual appeal and quality.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- a. the Goods; and
  - b. any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- a. hold the Goods on a fiduciary basis as the Supplier's bailee;
  - b. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - c. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - d. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - e. notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
  - f. give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- a. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, market costs and other manufacturing costs);
  - b. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - c. any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of insurance and transport of the Goods, which shall be invoiced to

the Customer. The prices of packaging are included in the price of the Goods except where the Order provides otherwise.

- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Supplier, the supplier will charge interest and compensation in accordance with the Late Payment of Commercial Debts (Interest Act 1998). For the avoidance of doubt, if the Customer is not a business the Customer agrees that it will be deemed a business for the purposes of the Act.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 7.9 **Cancellation fee.** Should the Customer withdraw for whatever reason from the Contract before delivery has taken place, and irrespective of any other damages which may be claimed, the Supplier has the right to demand 10% of the price set out in the Order for costs incurred while processing the Order as well as loss of profits.

## 8. Customer's insolvency or incapacity

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- a. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- b. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- c. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- d. (being an individual) the Customer is the subject of a bankruptcy petition or order;
- e. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- f. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- g. (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- h. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- i. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause to clause (inclusive);
- j. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- k. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- l. (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9. Limitation of liability

- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- a. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- b. fraud or fraudulent misrepresentation;
- c. breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- d. defective products under the Consumer Protection Act 1987; or
- e. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- a. the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- b. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10% of the price of the Goods.

10. **Force majeure**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. **General**

11.1 Assignment and subcontracting.

- a. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- b. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 **Notices.**

- a. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be

delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, or fax.

- b. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2 (a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

- c. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 **Severance.**

- a. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- b. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.4 **Waiver.** A waiver of any right or remedy under the Contract

is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by an authorised representative of the Supplier.

11.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

11.8 **Intellectual Property.** All Intellectual Property Rights in or arising in connection with the Goods shall be owned by the Supplier. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to licence such rights to the Customer.