

# Hillier Nurseries Limited Trade Card Terms and Conditions (the “Conditions”)

## 1. Definitions & Interpretations

1.1 – In these conditions: “Buyer” means the individual firm company or other party who purchases the Goods from Hillier; “Contract” means the contract for the sale and purchase of the Goods made between Hillier and the Buyer; “direct, indirect or consequential loss” includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss; “Goods” means the articles, and materials, and things or any of them comprised in the Contract between the Buyer and Hillier; “insolvent” means: the Buyer becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; the Buyer allows any execution to be levied on its property; the Buyer has a bankruptcy order made against it; the appointment of an administrator, administrative receiver or receiver over all or part of the Buyer’s property; the application for the appointment of an administrator; the Buyer makes any arrangement or compromise with its creditors; the passing of a resolution for the winding up or a meeting to pass such a resolution (except for the purposes of a solvent liquidation, reconstruction or amalgamation); the presentation of a winding-up petition or a petition for bankruptcy; the ceasing of, or threatening to cease carrying on business; “Hillier” means Hillier Nurseries Limited, “working days” means Monday to Friday excluding bank holidays. “Personal information” (“personal data”) includes your name, physical address(es), telephone numbers and other similar information that you provide us.

1.2 – A reference to any law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender shall include all other genders. Words in the singular include the plural and in the plural include the singular.

1.4 Condition headings do not affect the interpretation of these conditions.

## 2. Incorporation of Conditions

2.1 All orders for Goods shall only be accepted by Hillier subject to these Conditions and (subject to any variation under condition 2.2) shall exclude all other terms and conditions (including any which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document whether presented by the Buyer, referred to, or otherwise).

2.2 No variation or addition to these conditions shall be incorporated into the Contract unless such variations or additions have been expressly agreed to by Hillier in writing, and have been signed by a director of Hillier. The Buyer acknowledges that it has not relied on any statement, promise, representation or warranty made by or on behalf of Hillier which is not set out in the Contract. Nothing in this condition shall exclude or limit Hillier’s liability for fraudulent misrepresentation.

2.3 Any quotation or estimate made by or on behalf of Hillier whether in writing and/or orally, is an invitation only to the Buyer for it to make an offer. The quotation shall only be valid for 30 days and prices stated in any quotation or estimate are subject to change (as per condition 10.1).

2.4 All orders made in pursuance of any quotation or estimate shall be deemed to be an offer by the Buyer to buy the Goods subject to these conditions.

2.5 – No order placed by the Buyer shall be binding upon Hillier unless and until such order is accepted by Hillier in writing on its acknowledgement of order form.

2.6 The Buyer shall ensure that the quantities specified in its order and any specifications provided are complete and accurate. Subject to condition 7.1, the quantity and description of the Goods shall be as set out in Hillier’s acknowledgement of order.

## 3. New Customers

3.1 Where the Buyer is a new customer of Hillier, Hillier will require the Buyer to disclose the following information prior to or at the time of entering into any Contract with the Buyer:

3.1.1 Personal information, such as full name and address of the Buyer (including trading address and where applicable registered address and company number);

3.1.2 contact details for all of the Buyer’s branches; and

3.1.3 proof satisfactory to Hillier that the Buyer is in a trade or is a business. Only bona fide Trade customers ie Garden designers or landscapers will be accepted.

If the information is not provided within seven days of request, Hillier may terminate the Contract without liability to the Buyer.

3.2 The Trade Card is supplied, for the sole use & in connection with the Buyer’s business and cannot be used by friends and family.

3.3 Hillier reserves the right to cancel any Trade Card where the spend over any 12 month period is less than £1200 exclusive of VAT.

## 4. Delivery

4.1 Delivery of Goods to the Buyer shall be deemed to be effected by Hillier at the following times:

4.1.1 Where Goods are transported to the Buyer by Hillier, the manufacturer of the Goods, or by an independent carrier, at the time the Goods arrive prior to unloading at the premises specified in the Contract, or at the nearest road accessible point to such premises (as applicable);

4.1.2 in the event of Goods being collected by the Buyer, at the earlier of:

4.1.2.1 the time of collection of the Goods by the Buyer, its employees or agents from Hillier’s premises; or,

4.1.2.2 seven days after the date on which the Buyer was notified that the Goods were ready for collection.

4.2 Deliveries normally occur between 0800 and 1700hrs. Exact timings cannot be specified. The date or dates (if any) specified by Hillier in the Contract shall only constitute the times by which Hillier expects to effect delivery, and time of delivery shall not be of the essence.

4.3 Unless otherwise stated, all deliveries will be made at the kerbside within the arc of the crane delivering the goods. Hillier is not responsible for any additional lifting or carrying of the Goods. Hillier reserves the right not to unload Goods unless payment in full has been received and delivered Goods have been signed for.

4.4 When requested by the Buyer in writing, Hillier shall either endeavour to expedite delivery of the Goods (but such request shall not make time of delivery of the essence), or (as appropriate) delay the physical delivery of the Goods for a period of up to 28 days.

The Buyer shall reimburse Hillier for all additional costs (including but not limited to: overtime payments; storage charges and insurance) that Hillier incurs in complying with such a request under condition 6.6.

4.5 In the event that delay in physical delivery continues for a period in excess of 28 days then Hillier may:

4.5.1 terminate the Contract; and

4.5.2 sell the Goods to another person; and

4.5.3 seek damages for all direct, indirect and consequential loss suffered by Hillier as a result of the Buyer’s default.

4.6 If Hillier shall be prevented from delivering the Goods in accordance with the Contract as a result of delay or default on the part of the Buyer and the Contract is not cancelled, Hillier shall be entitled to reschedule the date for such delivery to such time as it shall reasonably require taking into account its commitments to third parties.

4.7 Subject to the other provisions of these conditions, Hillier’s financial liability for any late delivery shall be limited to the Contract Price and Hillier shall not be responsible for any direct, indirect or consequential loss, costs damages, charges, or expenses caused by any delay in the delivery of the Goods resulting from:

4.7.1 any failure of the Buyer to take delivery at the appropriate time;

4.7.2 any failure of the Buyer to give proper delivery instructions, or failure to obtain appropriate authorizations to permit the delivery of the Goods;

4.7.3 any delay or postponement of delivery requested by the Buyer pursuant to condition 6.0.

4.8 No delaying in delivery resulting from Hillier’s default shall entitle the Buyer to rescind the Contract unless the delay exceeds 5 days.

4.9 Hillier may deliver the goods by separate instalments. Each separate instalment may be invoiced separately. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5. Shortages

5.1 Although Hillier endeavours to deliver Goods that are as near as possible to quantity ordered, standard packaging and measurements means that there may be over deliveries of up to 10% or under deliveries of up to 5%. The Buyer is not entitled to reject the goods or any of them by reason of such a surplus or shortfall. Hillier reserves the right to charge for over deliveries at the pro rata rate.

5.2 Subject to condition 5.3 where Hillier has delivered the Goods, it undertakes to make up any shortages (which exceed the tolerance level in condition 5.1). Where the manufacturer has delivered the Goods, Hillier shall not be liable for any shortages but will use reasonable efforts to procure that the manufacturer will make up such shortfall.

5.3 Hillier shall only be bound by its undertaking to make up procure the making up, of shortages set out in condition 5.2 if:

5.3.1 the Buyer shall have notified Hillier in writing (and the carrier if other than Hillier) of such shortage, within three days of receipt of the Goods with details of the date and time of delivery, the invoice number, and the delivery advice number (if any);

## 6. Substitutions

Unless the Buyer has requested otherwise, and one of Hillier’s branch managers has agreed to such request in writing, Hillier may supply substitute Goods of equivalent type and quality in performance of the Contract.

## 7. Returns/Cancellations

7.1 If the Buyer requires cancellation of the Contract this will only be accepted at the sole discretion of Hillier and upon such terms as Hillier may determine.

7.2 We do not accept returns on any bagged products.

## 8. Price

8.1 Unless otherwise agreed by Hillier in writing (and signed by one of Hillier's branch managers) the price for the Goods shall be the price displayed in store on the date of acceptance of the Buyer's order.

8.2 The price for the Goods does not include Value Added Tax, (which will be charged at the applicable rate) carriage, or pallets (which will be charged to the Buyer). Where the pallets are re-useable, and are returned to Hillier in good condition within 14 days of delivery, Hillier shall credit the Buyer in full for such pallets.

8.3 Where plants and goods are advertised at a low price for the purpose of promotion or are offers with a bulk purchase discount (multibuy), the Buyer shall receive the most preferential discount available at the time of purchase, whether it be the advertised promotional discount or the prevailing trade discount, but not both.

8.4 Plants and goods that are reduced for the purpose of clearance are not eligible for further discount.

8.5 Direct home delivery products are not applicable for discount.

## 9. Payment

9.1 The Buyer shall make payment of each and every invoice in cleared funds in full without contra or set off. For all Buyers (other than Buyers with a credit account), invoices are payable upon order of the Goods.

9.2 In order to qualify for any discount advertised against listed prices for the goods at time of order, the Buyer shall be required to present their Hillier Trade Account Card at the time of order. This shall include any advertised benefit of holding a Trade Cash Account as well as any discount relating to specific goods as shall be advertised from time to time.

9.3 Without prejudice to Hillier's right to enforce payment, interest at the rate of 4% per annum above LIBOR for the time being may be charged from day to day on all monies outstanding after the due date of payment until the actual date of payment (whether before or after judgement). The Buyer shall not be entitled to receive any discount referred to in the Contract if payment is not received by the due date.

9.4 If charged, interest shall become due and payable pursuant to condition 9.3 notwithstanding the fact that a portion of the account or invoice is the subject of any dispute or query.

## 10. Force Majeure

Hillier reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer for any direct, indirect or consequential loss or damage suffered by the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental action, war or national emergency, civil commotion, acts of terrorism, strikes (whether or not relating to Hillier's or the Buyer's workforce), restraints or inability or delay in obtaining supplies, provided that if the event(s) in question continue for a continuous period in excess of 30 days either Hillier or the Buyer shall be entitled to give written notice to the other to terminate the Contract.

## 11. Health and Safety at Work Act 1974

The attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety at Work Act 1974. Hillier may make available upon request information on its products to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used. It is the responsibility of the Buyer to take such steps as are necessary to ensure that such information relevant to the Goods is made available to its employees agents or any person to whom the Buyer supplies them and to any other person to whom the Buyer should reasonably consider any such information should be given.

## 12. General

12.1 Hillier reserves the right to assign, sub-contract or sub-let the fulfilment of the Contract or any part of it without the consent of the Buyer. The Buyer shall not be entitled to assign the benefit or burden of the Contract without the prior consent in writing of Hillier.

12.2 Each Contract constitutes the entire agreement and understanding of Hillier and the Buyer and supersedes any previous agreement between Hillier and the Buyer relating to the subject matter of that Contract.

12.3 Any waiver by Hillier of any breach of, or any default under any provision of the Contract shall not be a waiver of any subsequent breach or default, and the failure or delay by Hillier to enforce any of its rights under the Contract shall be a waiver of such rights.

12.4 All notices given concerning the Contract shall be in writing, and shall be hand delivered, sent by first class post or be sent by fax to the invoicing address provided by the Buyer, or to the relevant Hillier branch and to Hillier's head office.

12.5 No person who is not a party to a Contract (other than lawfully successors and assigns) may enforce the terms of any Contract under the Contract (Rights of Third Parties) Act 1999.

12.6 In the event of a dispute arising out of any Contract, Hillier and the Buyer may attempt to resolve such dispute by mediation in accordance with the Centre for Effective Dispute Resolution Model Procedure.

12.7 These conditions and each and every Contract shall be governed by English law and Hillier and the Buyer submit to the exclusive jurisdiction of the English courts.

## 12. Privacy Policy

If you sign up as a Trade Card member, we collect the following personal data: name, email address, business name, address, postcode, company registration number, date of incorporation, website address, telephone number, signature. We will also require two types of identification to process your application, once processed this evidence will be destroyed. We will use this data for the following reasons:

- Provide you with the services you have requested
- Process your membership to associate your details with your Trade Card number
- Keep a record of your marketing and communication preferences with us
- To enable us to deliver more relevant content to you, through communications
- We process this data in order to perform our contract with you.

For more details on our privacy policy visit <https://www.hillier.co.uk/policies/privacy-policy/>