

# TERMS AND CONDITIONS

## Application and Entire Agreement

1. These Terms and Conditions will apply to the purchase of the goods detailed in our quotation (**Goods**) by the buyer (you or Customer) from SKY EAST UK LTD a company registered in England and Wales under number 08824299 whose registered office is at 5th Floor 22 Eastcheap, London, EC3M 1EU (**we or us or Supplier**).
2. These Terms and Conditions will be deemed to have been accepted by you when you accept them or the quotation or from the date of any delivery of the Goods (whichever happens earlier) and will constitute the entire agreement between us and you.
3. These Terms and Conditions and the quotation (together, the Contract) apply to the purchase and sale of any Goods between us and you, to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## Interpretation

4. A "business day" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
5. The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.
6. Words imparting the singular number include the plural and vice-versa.

## Goods

7. The description of the Goods is set out in our sales documentation, unless expressly changed in our quotation. In accepting the quotation you acknowledge that you have not relied upon any statement, promise or other representations about the Goods by us. Descriptions of the Goods set out in our sales documentation are intended as a guide only.
8. We can make any changes to the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements.

## Price

9. The Goods are invoiced at the list prices applicable on the day the order is received. Unforeseeable additional costs incurred by Sky East UK Ltd, for example due to weather conditions or statutory measures (e.g. Green Dot, road tolls, taxes), are paid by the Buyer separately.
10. All prices are subject to alteration without notice. Sky East UK Ltd reserves the right to invoice at prices ruling at the date of dispatch irrespective of the date of order.
11. All prices are net unit prices in Euro, unless credit facilities have been arranged or other arrangements been made. The statutory VAT applicable on the day of performance or delivery is added to this. Where credit facilities have been granted to the Buyer, payment must be made in accordance with respective credit agreement.

## Cancellation

12. The Buyer cannot cancel or change orders later than 4 weeks before the indicated dispatch date. Sky East UK Ltd may, at its discretion, accept to change the order, but any additional costs incurred will be charged to the Buyer.
13. If the Buyer in spite of the above clause fully or partially cancels or changes an order, the Buyer will be liable for any loss of profit and any other losses incurred by the Sky East UK Ltd.

## Payment

14. Invoice totals are due and payable as indicated on each invoice separately. If the Buyer fails to pay full amount according to Commercial Document by the due date specified in it, then the Buyer defaults on the payment.
15. The place of performance for payments is the head office of Sky East UK Ltd.
16. If the Buyer fails to pay or fails to pay in full by the due date, then Sky East UK Ltd may exercise the right to withdraw from the Commercial Documents without any penalty. In this case Buyer shall be liable for all deliveries made by Sky East UK Ltd that have not been paid for. Sky East UK Ltd will not be obliged to fulfil further delivery obligations and shall be able to declare other outstanding claims against the Buyer to be due immediately. Sky East UK Ltd is not obliged to repay partially paid sum from the Buyer. This amount will cover all costs incurred by Sky East UK Ltd.
17. Sky East UK Ltd shall reserve the right, at any time during credit period to serve notice requiring immediate payment by the Buyer in any of the following circumstances:
18. (a) the Buyer has a bankruptcy order made against him 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 enters into liquidation; or
19. (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under Commercial Documents between Sky East UK Ltd and the Buyer; or
20. (c) the Buyer encumbers or in any way charges any of the Goods; or
21. (d) the Buyer fails to pay any amount owing to Sky East UK Ltd which shall have come due; or
22. (e) the Buyer is in breach of any Commercial Documents with Sky East UK Ltd; or
23. (f) in the opinion of Sky East UK Ltd, the Buyer is or is likely to become insolvent; or
24. (g) the Buyer suffers a change of management or control which in the opinion of Sky East UK Ltd shall adversely affect its suitability for extended credit.
25. Buyer is obliged to pay as agreed between the parties. If the Buyer fails to pay on time, Sky East UK Ltd shall be entitled to interest from the day on which payment was due and to compensation for recovery costs. The rate of interest shall be as agreed between the parties or otherwise 0.1% per day. In case reminders about due payments are sent out, Sky East UK Ltd is entitled to charge a reminder fee.
26. In case of failed payment, Sky East UK Ltd is entitled to refer the matter to debt collection without notice. The Buyer is liable to pay all the costs related to debt collection.
27. If the Buyer fails to pay on time, Sky East UK Ltd is entitled to withhold all further deliveries to the Buyer, regardless of whether the deliveries are mutually interrelated.
28. Should the Buyer be in default of acceptance or culpably violate other duties of cooperation, then Sky East UK Ltd shall be entitled to demand compensation for any accrued damages, including additional costs. Sky East UK Ltd reserves the right to assert further claims. Should the aforementioned conditions exist, the risk of accidental loss or deterioration of the Goods shall pass to the Buyer at the time the Buyer is deemed in default of acceptance or payment.
29. In event of Sky East UK Ltd accepting bills of exchange, the Buyer shall be required to bear the incidental costs.
30. Cheques and bills of exchange shall only be considered on account of payment and shall not constitute payment as such. These provisions shall also apply if the Buyer has been granted a credit line, post-payment or a letter of credit for the payment.

## **Delivery**

31. Except where the Buyer collects the Goods, all prices for Goods delivered by rail are carriage paid to the agreed station, delivered by lorry carriage paid to the depot of the recipient and delivered by ship carriage paid to the designated port of destination.
32. The Buyer shall send the original bills of carriage to Sky East UK Ltd on request.
33. In the case of collection, the risk passes to the Buyer as soon as the Goods are handed over to the person carrying out the transport. In case of delivery by lorry, rail or ship, the risk passes to the Buyer as soon as the Goods are loaded on carrier.
34. As the manufacture of our products is weather-dependent, delivery is made only roughly on specified delivery dates within the scope of availability unless specific delivery deadlines or dates have been agreed as fixed. Partial deliveries are permitted.
35. The commencement of an agreed delivery period presupposes that the Buyer duly meets his obligations on time.

## **Inspection and Acceptance of Goods**

36. With respect to the obligation to inspect and notify of defects, the notification of defects must be issued in writing within notification period. Sky East UK Ltd must be notified of obvious defects particularly with respect to the identity and quantity of the Goods by no later than 2 days after delivery and notified of such defects as can be found only in the course of the immediate due inspection by no later than 8 days after delivery. Notification of hidden defects must be given immediately on discovery. Prompt dispatch of the notification is adequate in order to comply with the term. Sky East UK Ltd must be informed immediately of transport damage regardless of the aforementioned deadlines. If no notification is given by no later than 14 days after delivery, the products are deemed to adhere to quality standard.
37. In the event of defects, the Buyer must give Sky East UK Ltd opportunity to deliver a defect free item within a reasonable period (subsequent fulfilment). The defective product must be returned. If the subsequent fulfilment has failed or if a reasonable period set by the Sky East UK Ltd for the subsequent fulfilment has expired without success or is unnecessary in accordance with the statutory provisions, then the Sky East UK Ltd shall reduce the purchase price in amount of defected product or (in the case of significant defects) Buyer can withdraw from the mutual business arrangement.
38. The culture substrates and soil additives Sky East UK Ltd supplies are natural products of which the properties (e.g. colour, structure, composition) can naturally differ from one delivery to the next. In order to avoid culture risks arising in the products due to microbial and chemical reaction processes as a result of improper handling and storage, our products are to be used only for the culture purposes for which they are intended. Products supplied loose and packaged products should be stored dry and cool, i.e. protected from sun and precipitation as well as contamination by foreign matter, on a concrete/paved floor in roofed storage facilities. They must be used soon within the products shell life, as long-term storage can impair the quality. In particular, culture substrates with slow-release fertilizers and propagation substrates for vegetable and decorative plants must be used within a few days.
39. The culture substrates and soil additives are not sterile but rather naturally microbially activated. Micro-organisms may be autochthonous or colonize substrates during storage or plant cultivation depending on the time of year and the culture conditions. The large majority of products contain high levels of organic matter, which is inevitably subject to microbial decomposition by fungi, bacteria and other organisms. Saprophytic nematodes may be present in the culture substrates and soil additives in small numbers. Manuring of the culture substrates for plant growth moreover promotes the growth of saprophytic organisms. The presence of saprophytic organisms and the consequences of such, e.g. appearance of fungi, therefore do not constitute product defects.
40. Colonization by ubiquitous micro-organisms and the ubiquitous appearance of saprophytic organisms therefore constitute a product defect at most if the products are anthropogenies contaminated with an unnaturally/atypically high quantity of saprophytic organisms or micro-organisms on transfer of risk.

## Risk and Title

41. Sky East UK Ltd retains title to the Goods the Buyer purchases from Sky East UK Ltd in the course of his commercial activities until all claims against the Buyer under the business relationship, including any future claims under contracts signed simultaneously or later, have been settled by the Buyer. This shall also apply if individual claims for payment or all of Sky East UK Ltd claims for payment have been included in a current account and the balance has been struck and accepted.
42. In the case of default of payment (with respect to payment of the purchase price or due bills of exchange) or in the case of other violations of duty for which the Buyer is responsible, Sky East UK Ltd is entitled to take back the Goods and the Buyer is obligated to surrender them after having been warned unsuccessfully. Sky East UK Ltd retains any and all pre-payments in case of default on payments by the Buyer.
43. Taking back the delivered Goods shall only constitute a withdrawal from the contract upon Sky East UK Ltd express written declaration to that effect.
44. The Buyer shall be entitled to resell the Goods in the ordinary course of business, provided that all claims arising from the resale are assigned to Sky East UK Ltd as follows:
45. The Buyer hereby assigns all future claims, including all ancillary rights, accruing to him against customers or third parties through resale or other legal grounds, no matter whether the reserved Goods are resold unprocessed or after processing. The Buyer is authorized to collect such claims even after assignment. This shall not prejudice Sky East UK Ltd right to assert and/or collect the claims themselves, but Sky East UK Ltd undertakes not to collect such claims themselves as long as the Buyer duly meets his payment obligations.
46. Sky East UK Ltd may demand that the Buyer inform them of the assigned claims and the parties by whom they are owed, provide them with all particulars necessary for collection, furnish the corresponding documents to them and notify the owing parties of the assignment. If the reserved Goods are resold in combination with other Goods not belonging to Sky East UK Ltd, then the Buyer's claims against the customer shall be deemed assigned to Sky East UK Ltd in the amount of the delivery price agreed between the Buyer and Sky East UK Ltd.
47. Any treatment, processing and mixing of reserved Goods shall be done on behalf of Sky East UK Ltd as manufacturer without giving rise to any obligations on the part of Sky East UK Ltd. The processed Goods shall be considered reserved Goods under these conditions. If the reserved Goods are processed or inseparably mixed with other Goods not belonging to Sky East UK Ltd, then Sky East UK Ltd acquires co-title to the new item in the same proportion as that between the value of the reserved Goods and the other Goods involved at the time of processing or mixing. The co-title thus generated shall be considered reserved Goods under these conditions.
48. d) Sky East UK Ltd undertakes to release the securities, to which they are entitled, to the extent that their value is exceeded by more than 20% of the claims to be secured, provided these have not been settled yet.
49. The Buyer shall only be entitled or authorized to resell or use the reserved Goods provided that the claims are actually assigned to Sky East UK Ltd in accordance with the above provisions.
50. The Buyer shall not be entitled to dispose of the reserved Goods in any other way than by using or reselling them in the ordinary course of business; he shall in particular not be entitled to pledge them or transfer ownership by way of security.
51. The Buyer shall notify Sky East UK Ltd immediately of any enforcement proceedings or other interventions of third parties concerning the reserved Goods or assigned claims and hand over all documents necessary for objection (in particular returns of execution or attachment orders and transfers of garnished claims). At the same time, the Buyer shall enclose an affidavit with his notification regarding the identity of the attached items.
52. Upon stoppage of payment or filing and institution of insolvency proceedings, the right to resell and use the reserved Goods, as well as the direct debit mandate for assigned claims, shall expire; the direct debit mandate shall also expire in the event of a protest of a cheque or bill of exchange.
53. Title to the reserved Goods and the assigned claims shall pass to the Buyer upon settlement of all claims of Sky East UK Ltd arising from the business relationship.

## Termination

54. We can terminate the sale of Goods under the Contract where:
- a. you commit a material breach of your obligations under these Terms and Conditions;
  - b. you are or become or, in our reasonable opinion, are about to become the subject of a bankruptcy order or take advantage of any other statutory provision for the relief of insolvent debtors;
  - c. you enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with your creditors; or
  - d. you convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator, notice of intention to appoint an administrator is given by you or any of your directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of your affairs or for the granting of an administration order, or any proceedings are commenced relating to your insolvency or possible insolvency.

## Limitation of Liability

55. Our liability under the Contract, and in breach of statutory duty, and in tort, misrepresentation or otherwise will be limited to this section.
56. Subject to the clauses above on **Inspection and Acceptance** and **Risk and Title**, all warranties, conditions or other terms implied by statute or common law (save for those implied by Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
57. If we do not deliver the Goods, our liability is limited, subject to the clause below, to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
58. Our total liability will not, in any circumstances, exceed the total amount of the Price payable by you.
59. We will not be liable (whether caused by our employees, agents or otherwise) in connection with the Goods, for:
- a. any indirect, special or consequential loss, damage, costs, or expenses; and/or
  - b. any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; and/or
  - c. any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; and/or
  - d. any losses caused directly or indirectly by any failure or breach by you in relation to your obligations; and/or
  - e. any loss relating to the choice of the Goods and how they will meet your purpose or the use by you of the Goods supplied.
60. The exclusions of liability contained within this clause will not exclude or limit our liability for death or personal injury caused by our negligence; or for any matter for which it would be illegal for us to exclude or limit our liability; and for fraud or fraudulent misrepresentation.

## Communications

61. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

62. Notices will be deemed to have been duly given: when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - a. when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - b. on the fifth business day following mailing, if mailed by national ordinary mail; or
  - c. on the tenth business day following mailing, if mailed by airmail.
63. All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

## **Data Protection**

64. When providing the Goods to the Buyer, the Seller may gain access to and/or acquire the ability to transfer, store or process personal data of employees of the Buyer.
65. The parties agree that where such processing of personal data takes place, the Buyer shall be 'data controller' and the Seller shall be the 'data processor' as defined in the General Data Protection Regulation (**GDPR**) as may be amended, extended and/or re-enacted from time to time.
66. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.
67. The Seller shall only Process Personal Data to the extent reasonably required to enable it to provide the Goods as mentioned in these Terms and Conditions or as requested by and agreed with the Buyer, shall not retain any Personal Data longer than necessary for the Processing and refrain from Processing any Personal Data for its own or for any third party's purposes.
68. The Seller shall not disclose Personal Data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need-to-know" basis and only under the same (or more extensive) conditions as set out in these Terms and Conditions or to the extent required by applicable legislation and/or regulations.
69. The Seller shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Seller on behalf of the Buyer. Further information about the Seller's approach to data protection are specified in its Data Protection Policy, which can be found [The policy can be found on our website](#). For any enquiries or complaints regarding data privacy, you can e-mail: [info@skypeat.co.uk](mailto:info@skypeat.co.uk).

## **Circumstances Beyond the Control of Either Party**

70. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

## **No Waiver**

71. No waiver by us of any breach of these Terms and Conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

## **Severance**

72. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

## **Law and Jurisdiction**

73. These Terms and Conditions shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Terms and Conditions (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.