

NICHOLSONS

TERMS & CONDITIONS

These terms and conditions apply to the supply of goods (including plants) and/or services by Nicholsons.

1 About us

1.1 We are Nicholson Nurseries Ltd (trading as NICHOLSONS), a limited liability company registered in England and Wales with company number 04820053.

1.2 Our Plant Passport No. is UK/EC/14009 and our VAT number is 287 1335 86.

1.3 Our registered office and place of business is located at NICHOLSONS, The Park, North Aston, Bicester, Oxon. OX25 6HL.

2 How these terms apply

These are the terms of the legal contract between you and us. Please read them carefully, paying particular attention to the exclusions and limitations of liability in clauses 6.4, 10 and 13.

*If you are a **consumer** please also pay particular attention to clause 7, which explains your right to cancel the contract and when this applies.*

2.1 **Other terms:** These terms are the only terms and conditions which apply to your purchase. All other terms (including those referred to in purchase orders or which are otherwise provided to us) are excluded.

2.2 **Website purchases:** These terms do not apply to purchases made online at www.rosara.co.uk. Those purchases will be subject to the ROSARA website's terms and conditions.

2.3 **Interpretation:** In these terms:

- (a) references to "goods" includes all plants, products and any deliverables or materials we supply; and
- (b) phrases such as including, include, in particular or any similar expression shall be construed as illustrative and not as exhaustive or exclusive.

3 Quotations and orders

3.1 **Subject to availability:** Goods are subject to availability at the time of ordering. Visitors are welcome to inspect the nursery by our office.

3.2 **Validity:** Unless otherwise specified, all quotations are valid for 30 days from the date on which they were given.

3.3 **Non-binding:** Quotations are not binding and are not offers to contract. By accepting a quotation and placing an order you are making an offer to contract on those terms. If we accept your order, we will notify you to confirm this (at which point a contract between you and us is formed). Please note that, until an order is confirmed, product prices and delivery charges are subject to change.

3.4 **Conditions:** Quotations are provided on the following basis:

3.4.1 Where the quotation is for a scheme of works, it assumes that the whole scheme is to be undertaken. We reserve the right to change our rates if you only wish to purchase parts from the scheme of works.

3.4.2 Where quantities or types of products/services have been calculated on the basis of drawings or instructions, the quotation shall be an estimate only. You accept that the actual quantities or types of product/service used (and the resulting cost) may vary.

3.4.3 Products and services listed in the quotation are subject to availability. Plants and their characteristics (such as colour, height, pot size and corresponding cost) may vary from those listed in the quotation or shown online or in brochure.

3.4.4 That the following statements are accurate:

- (a) All spoil can be disposed of on site in accordance with applicable law and with ease, unless otherwise stated.
- (b) There are good ground conditions, and the soils on site are suitable for the products/services requested.
- (c) Unless stated, watering and maintenance is not included.
- (d) Easy and available access will be provided to work areas and materials at all times.
- (e) The only goods and/or services required are those in the quotation.

If any of these are incorrect, the cost payable by you could increase.

4 Prices

4.1 **Goods:** Prices for the supply of goods exclude delivery (unless otherwise stated). If the cost to us of supplying an order increases before delivery, we may increase the price accordingly. Unless otherwise agreed, orders only including goods are payable upon being placed.

4.2 **Services:** A deposit of 20% of the Order value is payable when placing an order (unless we state otherwise, e.g. because payment in full is required). The deposit will be deducted from our final invoice and any remaining balance will be returned to you.

4.3 **VAT:** All prices shown include VAT (unless otherwise stated). In the event the prevailing rate of VAT changes during the period between an order being confirmed and an invoice being issued (or, if earlier, the goods and/or services being provided), the amount of VAT you have to pay for those goods and/or services may change.

4.4 **VAT Reverse Charge:** We will assume that you are the "end user" or an "intermediary supplier", for the purposes of the VAT reverse charge, unless you let us know to the contrary.

4.5 **Pricing errors:** We try to ensure all our pricing is correct, but there may be circumstances where an error has taken place. We are under no obligation to sell products at an incorrect price and will contact you to confirm if the actual price is acceptable or arrange an order cancellation and refund.

5 Your order

5.1 **Amending an order:** Once an order has been placed it is final. We may (at our discretion) allow you to make changes, but reserve the right to increase our unit rates or add an amount to offset the additional costs incurred.

5.2 Substitutions: We reserve the right to substitute plants where the specified plant is not available, or to omit them altogether and deduct the cost from the final bill.

5.3 Cancelling: If you cancel an order in accordance with clause 12.2, you are responsible for any costs we have incurred which we can't reasonably recover, together with an administration charge of 10% of the order value.

6 Our products and services

6.1 Our promise: We aim to provide high quality plants, goods and services. We will ensure that our goods and services are fit for their usual purposes and they conform in all material respects to their description and (if applicable) sample. Where we provide services, these shall be provided with reasonable skill, care and diligence. If you are consumer, this promise is in addition to your other legal rights (see clause 7).

6.2 Tree work standards: Arboricultural work shall be completed in line with BS3998 'Recommendations for Tree Work' (where appropriate) unless agreed otherwise with you.

6.3 Complaints: Any complaints regarding the quality of the plants, materials or workmanship should be made as soon as possible and not later than 7 days from collection, delivery or completion of the contract.

6.4 Exclusions: We do not offer any warranties or guarantees other than those contained in clause 6.1 (and all other warranties are excluded). We are not responsible for goods and/or services after acceptance of the delivery or signing off of the job. We are also not responsible for plants that fail to grow due to unsuitable soil, location or other conditions, inadequate ground preparation, planting or maintenance (unless we agreed to do this or provided incorrect instructions), adverse weather conditions or other causes beyond our reasonable control.

6.5 Plant guarantee: We can offer to guarantee the success of your plants. However, this guarantee is not included as standard and will result in an additional charge.

7 Returns and cancellations (this clause applies only consumers and not to trade/business customers)

7.1 If you are a consumer, you have right to:

7.1.1 claim a refund, replacement, repair and/or compensation if you receive products which are faulty or not as described. You can also cancel the contract in some situations; or

7.1.2 if you purchase products online or remotely, you can change your mind and cancel the contract within 14 days of delivery and obtain a full refund. This cancellation right does not apply to perishable items (including living plants); products which have been sealed for health or hygiene reasons (and which you have unsealed); or to bespoke or customised products.

7.1.3 if you purchase services remotely, you can change your mind and cancel the contract within 14 days of delivery and obtain a full refund. If you ask us to supply services during this period, and then cancel, you will have to pay for any services already received (and our costs incurred in providing them) by the time you cancel. If the services are already complete, you must pay for them in full.

7.2 To cancel the contract you must contact us by calling us

on 01869 340342 or emailing office@nicholsonsgb.com , alternatively you can complete our online cancellation form www.nicholsonsgb.com/cancellationform . You'll also have to return any products you've already received to us (at your own cost). Alternatively, we can collect products from you, but you will have to pay our reasonable collection costs.

7.3 If our products are not of satisfactory quality, as described or fit for their usual purpose, then you can

7.3.1 reject them, provided you notify us within 30 days of delivery; or

7.3.2 have them repaired or replaced (though we will decide which is most appropriate).

7.4 If we cannot repair or replace a faulty product, we will agree to either reduce the price (by issuing a partial refund) or allow you to return the product and receive a full refund. If the product has already been used, we may reduce amount of the price reduction or refund to reflect that use.

7.5 Where the product consists of multiple units or instalments, only some of which are unsatisfactory, you may choose to only reject the unsatisfactory parts.

8 Payment and invoices

8.1 Ownership: We retain ownership of all goods until cleared payment for all the goods and/or service has been received in full. However, you are responsible for goods from the time of delivery or collection (even if payment has not yet been received in full and we still own them).

8.2 Payment methods: We prefer payment by BACS. We also accept payment by major debit or credit cards (except American Express). If we are unable to take payment, we may cancel your order.

8.3 Due date: Unless otherwise stated, invoices are due within 14 days of their date.

8.4 Late payment: If any payment is not made on the due date, we may suspend any further provisions of goods and/or services under the contract until payment is made (without prejudice to any of our other rights) and we reserve the right to cancel the contract in relation to such further provisions of goods and/or services and recover any goods already supplied at your expense.

8.5 Surcharge: A surcharge of 10% shall be added to all invoices not paid when due. In addition, invoices not paid within 56 days of their due date shall incur interest at a rate of 15% per annum until paid.

8.6 Interim invoices: interim invoices will be submitted for jobs lasting longer than a month. These are also subject to the same terms as above.

9 Delivery

9.1 Estimates only: Delivery dates and times provided by us or our couriers are only estimates and are not guaranteed. If the time of a delivery is essential, you must agree this with us before placing your order. Once an item has been dispatched, we will attempt to contact you by email to confirm it is on its way. We may deliver goods by instalment and are not obliged to deliver products in the same chronological order as they were purchased.

9.2 Click and collect: If you choose to pick up goods using

our Click and Collect option, our only responsibility is to make the goods available for collection (and you are responsible for organising transport using a suitable vehicle).

9.3 Large items: Deliveries of larger items are kerbside only.

9.4 Changes: We reserve the right to make changes to dates and timings if necessary (including due to adverse weather, unforeseen circumstances or other emergency works being required). We will try to notify you as soon as possible to minimize any disruption.

9.5 Bare root plants: All bare root plants are only available for shipping between November and March. If you place an order with us outside of these months, payment and dispatch will be placed on hold until the plants are ready for dispatch.

9.6 Quantities: If the delivery is 5% more or less than the quantity of products ordered, then you may not reject them and instead a pro rata adjustment shall be made to cost of the order.

9.7 Checking and watering: You must also check plants and other goods upon delivery or collection and (where necessary) are responsible for watering them soon after.

9.8 Missed or failed deliveries: If you are not available we will either leave the delivery in a safe place (or with a neighbour), or else leave a note or contact you to arrange redelivery. In some cases, our courier will contact you to agree a delivery slot, in which case it is your responsibility to be available at that time (and if you miss an agreed delivery slot, there may be an additional charge for redelivery).

9.9 Redelivery: If you fail to contact us or agree a redelivery slot, we may store the goods (for which there will be a charge) and/or bring the contract to an end. If we end the contract then our only liability to you will be to refund the price have you already paid, minus our attempted delivery costs and any loss of value in the goods (which, for perishable plants, could be their full value).

9.10 Errors in information: If we cannot complete a delivery because you have given us incorrect or incomplete information, this will count as a missed delivery and you are responsible for contacting us with correct information, or else we may end the contract in the manner described above.

10 Site access and hazards

10.1 Access: You are responsible for ensuring we have free and clear access to premises such as we reasonably require (this includes free and available parking for our contractor's vehicles). If there are any impediments or obstructions, you must notify us in advance. You must also notify us of any reasonable policies (e.g. regarding health and safety) that our personnel will need to comply with.

10.2 Site preparation: Often our delivery of goods and/or services entails the carrying of material over gardens and through properties. Please make sure that walls and surfaces are adequately protected (builder's polythene is a good method) and that fragile objects (such as pots etc.) are moved. Our staff will be more than happy to move heavier objects for elderly or disabled clients. Lawns tend to recover rapidly but very wet weather can give rise to very muddy conditions. We are able to provide boards to protect lawns, though this is not included as standard and may incur an additional cost. Please

contact us for further details.

10.3 Hazards: We will be using CAT scanning as good practice, but you must warn us, in writing, of any site hazards which are not immediately apparent. You are responsible for costs or damage which arise as a result of your failing to do so.

10.4 Property damage: Every effort will be made to avoid damage to property (including products you have purchased from us), but we are not responsible for loss or damage that might have been avoided by your taking precautions (clause 10.2) or warning us of hazards (clause 10.3). Where we are responsible for damage that could not have been avoided, our only liability will be to take reasonable steps to make good that damage or (at our option) to pay for the damaged property to be either repaired or replaced to an equivalent standard.

10.5 Livestock and animals: Livestock and other animals must be clear of any delivery/work sites. You are responsible for ensuring sites are secure to prevent either your own or any third party's animals from entering. The services may involve activities (such as felling or controlled fires), dangerous tools, equipment or materials, hazardous chemicals or poisonous plants, any which could cause injury or death to animal life (for which we accept no responsibility whatsoever and you shall be liable).

10.6 Water: A supply of water must be made available free of charge for us to use.

11 Planting, landscaping and garden services

11.1 After care: once work is complete, you are responsible for the well-being of all plants, unless we have agreed to maintain them.

11.2 Weeds: we try to deal with invasive perennial weeds during planting, but there is no guarantee they will not return.

11.3 Watering: you are responsible for watering and checking all plants and turf once these are planted or laid on site.

11.4 Replanting: The condition and wellbeing of any old plants you ask to be salvaged and replanted is your responsibility.

11.5 New lawns: Newly laid turf and/or seeded lawns may be subject to slumping after laying. We make efforts to prevent this, but it is sometime unavoidable and is not our responsibility. If remedial work is required then this will be charged at our usual day rate, unless otherwise agreed.

11.6 Tree Preservation Orders, Conservation Areas and Felling Licenses: You are responsible for ensuring our work will not breach any laws or regulations (e.g. Tree Preservation Orders (TPOs) or Conservation Areas). If you suspect the site is subject to a TPO or is in a conservation area, you must inform us when placing an order. We can check for the presence of (TPOs and conservation areas). We can also make applications on your behalf (though additional charges may apply).

11.7 Other investigations and private covenants: Other than investigating the existence of TPOs and conservation areas upon request (see clause 11.6), we shall not carry out any investigation into land ownership or applicable covenants, restrictions or other laws or regulations. You are responsible for ensuring all necessary rights, licences and permissions are in place for us to access the site and carry out the work.

11.8 Felling: Quotes for the felling of trees do not include the removal of stumps. If required, we can quote for this as a separate service (see clause 11.9). If contamination is found within the lower stem (e.g. wire, concrete, gravel, nails etc.) the stem will be left as low to the grounds as reasonably practical as dictated by the nature and extent of contaminants.

11.9 Stump Grinding: Stump grinding is not included in the quotation unless otherwise specified. Due to the nature of stump grinding the stumps will be ground down to approximately 150/200mm below the surface level depending on which machine is used. Under no circumstances are roots included in the grinding unless they are exposed above the surface level and are part of the discussed quotation. In all cases grindings will be left on site and used to back fill the hole, unless specified at time of quotation. There will be no guarantee that planting can be undertaken in the same place once the stump is removed.

12 Termination

12.1 Our right to terminate: Without limiting our other rights or remedies, we may terminate the contract with immediate effect by giving you written notice if:

12.1.1 you commit a material breach of contract and (if such a breach is remediable) you fail to remedy that breach within 14 days of being required in writing to do so; or

12.1.2 we have not yet received payment in full for the goods and/or services, and you are subject to an insolvency related event (such as bankruptcy, liquidation or administration) or a resolution, decision or ruling which makes such an event likely.

12.2 Your right to cancel an order: You may terminate the contract and cancel your order at any time by notifying us in writing. However, you are responsible for any costs we have incurred which we can't reasonably recover, together with an administration charge of 10% of the order value.

12.3 Outstanding sums: On termination of the contract for any reason you must immediately pay all outstanding unpaid invoices (and any accrued interest).

12.4 Consequences of termination: Termination shall not affect any rights and remedies that have accrued as at termination.

12.5 Continuing effect: Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

13 Liability

13.1 What we're liable for: If we are negligent or breach our contract with you, we will be responsible for any loss or damage you suffer that is a direct and foreseeable result (i.e. an obvious consequence) of our breach of contract or our negligence. However, our maximum liability will not exceed the amount you have paid to us under the contract or, if the loss or damage relates to a particular product the relevant product.

13.2 We are also liable for any losses the law doesn't allow us to exclude (including fraud, and personal injury or death caused by negligence).

13.3 What we're not liable for:

13.4 except as set out above, we are not responsible for any other loss or damage you suffer. This includes loss or damage which is not directly caused by our breach of contract or negligence, and/or which is not foreseeable at the time of contracting.

13.5 we also are not liable for plants once they have been delivered and accepted; nor for the replacement of any plants that fail to grow due to unsuitable soil conditions, inappropriate choice of plant for site conditions, inappropriate planting or maintenance (unless you demonstrate this is a direct result of your following our written instructions). **Acts outside our control:** We shall have no liability to you under the contract if we are prevented from, or delayed in performing, our obligations under the contract or from carrying on our business by acts, events, omissions or incidents beyond our reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of IT systems, plant or machinery, fire, flood, storm, or default of our suppliers or subcontractors.

13.6 Your obligations: We will have no liability for delays or failures which result from your failure to fulfil your obligations under these terms or from you failing to provide necessary access, information or cooperation.

14 Intellectual Property

As between you and us, all intellectual property rights and all other rights in the products and services shall be owned by us. You are entitled to use any reports or other documents only for the purpose they were provided for.

15 Data protection

15.1 Our privacy policy: We take great care to protect your personal information (such as that we collect when you contact us or place an order). Examples of personal information we collect include your name, addresses, email and telephone number. Further information on how we use personal information can be found in our Privacy and Cookies Policy (<http://www.nicholsonsgb.com/privacy-cookie-policy/>).

15.2 What we use personal data for: We'll only use your information with your consent, or to the extent necessary in order to perform a contract with you, fulfil our legal duties, or for other legitimate purposes. For example, when you place an order, we will use your information to process payment, dispatch goods and keep a record of the sale. If you have agreed to receive marketing, then we will use your information to keep you up to date on the latest news about us and our products.

15.3 Your rights: We want to ensure that you remain in control of your personal data. The law provides you with various rights to help you do this, including the right of access. Further details on how to exercise these rights can be found in our Privacy and Cookies Policy on our website (<http://www.nicholsonsgb.com/privacy-cookie-policy/>).

15.4 Data controller: We are registered as a data controller with the Information Commissioners Office under number

ZA272523.

15.5 International transfers: Your personal information may be transferred outside the European Union, though if this occurs, we will ensure it is adequately protected at all times and that your privacy is respected.

16 General

16.1 Notices: Communications and notices regarding your order and our contract with you will be in writing (which includes email).

16.2 Contract terms: All contracts between you and us are subject to these terms. No other contract, representation or promise of any kind shall form part of, alter or supersede of these terms. No variation of these terms shall be effective unless it is in writing and signed by one of our company's directors.

16.3 No waiver: If either you or we delay or fail to exercise any right or remedy, or only do so in part, that shall not stop us exercising that right or remedy at a later date.

16.4 Third parties: The contract is between you and us and no one else has any rights under it. The Contracts (Rights of Third Parties) Act 1998 shall not apply to this contract.

16.5 Assignment: You may only transfer your rights or your obligations under the contract with our prior written agreement. We may transfer our rights and obligations under these terms to another person if we choose to do so.

Law and jurisdiction: The contract between you and us is governed by English law, and any legal proceedings relating to it must be brought in the English courts.

17 Brexit Clause

17.1 Brexit may, or may not, result in increased trade tariffs, or unexpected exchange rate fluctuations. ("Brexit" means that during the Term of this Agreement pursuant to article 50 of the Treaty of Lisbon, the UK will leave the European Union). If we believe that the consequences of Brexit have materially increased the costs of us performing our obligations under the agreement/contract we have with you, we reserve the right to revise our prices. We will use our best endeavours to find a different source of the materials to mitigate the extra costs, but if this is not possible, we would wish to agree a revised figure and sharing formula to absorb them. We will contact you promptly and supply the details and evidence of such consequences. In most cases the Brexit effect is only likely to affect items that are imported from abroad – plants and timber items in our case. Within 14 days of giving notice we will discuss the issues with you in good faith and agree whether any amendments are required to the agreement/contract as a result of Brexit. We will ensure that the overall balance of obligations, benefits, liabilities and risk between us remains the same as it was.