

## Standard Conditions of Sale and Delivery Melcourt Industries Limited (hereafter referred to as MELCOURT)

### 1. Acceptance of Terms

a. Melcourt will sell goods and/or services and the proposed/buyer will purchase goods and/or services only to the conditions set out hereunder unless previously amended by Melcourt in writing.

b. Samples of goods offered are selected at random, sent in good faith, but are a visual guide only. There is no express or implied condition that the goods supplied will be identical or similar to the samples supplied. If there shall be any discrepancy between a specification and a sample the description contained in the TECHNICAL INFORMATION DATA SHEET shall prevail.

c. All quotations are void if not accepted within thirty days of utterance. Melcourt reserve the right absolutely to pass on to the purchaser any unexpected increase or decrease in the cost of providing the goods and/or services required by the buyer.

d. Should any document uttered by buyer or Melcourt evidencing the Terms of Contract conflict Melcourt's Terms of Contract will prevail.

e. Acceptance of quotations includes acceptance of all terms and conditions set out hereunder.

f. Any quotation given by Melcourt is conditional upon the proposed buyer not having exceeded his credit limit (as determined by Melcourt from time to time in such a manner as Melcourt shall think fit).

Where any quotation given exceeds the proposed buyer's credit limit (aware that credit limited has previously been reached or exceeded) then any quotation given to the proposed buyer by Melcourt is determined (or shall be treated as void ab initio) and shall have contractual effect as an offer but merely a response to information sought.

Any potential buyer may at any time ask Melcourt for details of their current credit rating.

### 2. Delivery

a. Each delivery or consignment shall stand as a separate contract. Failure or delay in one delivery shall not invalidate the contract as a whole, or entitle the buyer to defer payments for any previous or remaining delivery.

b. Melcourt may supply material in its own vehicle or a suitable vehicle specially hired for the purpose. The buyer must ensure that all sites where the vehicle(s) are to discharge bulk materials are safe for 44 tonnes gross laden vehicles and tipping trailers.

c. No liability will attach to Melcourt in the event that unsuitable or unsafe sites for deliveries are damaged when delivery is made. The buyer accepts absolutely and will reimburse Melcourt for any damage occasioned to the vehicles used for delivery if such damage is caused by an unsuitable or unsafe site.

The delivery vehicle will not be moved from the roads, hard standing or other suitable off-loading sites, unless the driver is specifically requested to do so by the purchaser or his agents. In the event that such a vehicle move is requested and the driver agreed, (see paragraph f. below), the buyer will be responsible for any damage to the vehicle or site that may be caused.

d. Melcourt allows the buyer 1½ hours free of charge in which to find a safe site and allow the vehicle to discharge its load unhindered. Delay above and beyond 1½ hours and not of Melcourt's making, will be charged at £50.00 per hour or pro-rata.

e. Goods requiring special appliances for unloading (i.e. forklift truck) from the delivery vehicle are delivered only on the understanding that such appliances are made available by the buyer at the destination.

f. The driver of the vehicle delivering Melcourt products has total right of judgement on the safe discharge on any site.

### 3. Claims

a. Claims based upon those defect of quantity, quality or condition which should be apparent upon reasonable examination, shall be made immediately known by email, telefax or telephone to Melcourt and written confirmation dispatched within three business days of arrival of the goods at the destination to which they have been consigned. In the event of no written complaint being made within the allocated time, the buyer will be held to have accepted the material as satisfactory, for his purpose.

b. While the company will make every effort to supply materials strictly in accordance with the quality or specification ordered, if any of the materials supplied are proved to be defective or not of the correct quality or specification ordered, the Company's liability will be limited to the free replacement of materials shown to be unsatisfactory.

In no circumstances will the Company be liable for consequential loss or damage caused or arising by any reason or any fault in the goods or materials supplied and it is specifically declared that defects which become apparent only after the materials have been used will not entitle the customer to any claim in excess of the invoice price of the materials supplied.

c. All pallets and packaging materials supplied with Melcourt's products are provided free of charge. The buyer will use or dispose of these pallets and packaging materials as they feel fit without cost or recourse to Melcourt.

#### *Melcourt Sylvamix<sup>®</sup>*

It has been found that in a tiny (less than 0.3%) volume of Melcourt Sylvamix<sup>®</sup> sold, a fungal infection, *Melanoleuca verrucipes* has caused damage to some plants grown in the product. Having drawn this to your attention, if this or any other problem related to Sylvamix<sup>®</sup> happens when utilising Melcourt Sylvamix<sup>®</sup>, we will not be liable to you under section 14 of the Sale of Goods Act 1979 or otherwise, to the extent that this makes the quality of the goods unsatisfactory to you or your customer (if you are a distributor). However, if you or your customer can demonstrate to our reasonable satisfaction that it is Melcourt Sylvamix<sup>®</sup> that has caused an infection of *Melanoleuca verrucipes* or any other problem at your premises, then we will make a refund to you of the price you or your customer paid for the product plus up to 50% of the price paid for the goods, on an ex gratia basis.

### 4. Property and Risk

a. The property in any goods supplied by Melcourt shall not pass to the buyer until Melcourt has received payment in full; (i) for the goods supplied (ii) for all other goods the subject of any other contract between the seller and the buyer which at the time of payment of the full price of the goods supplied have been delivered to the buyer, but not paid for in full.

b. Any goods supplied or to be supplied to the buyer shall nevertheless be at the buyer's risk from the time when Melcourt notifies the buyer that the goods are available for collection or from the time of delivery, whichever shall be earlier.

# Standard Conditions of Sale and Delivery

## /Property and risk continued

c. In the event that the Buyer is in default of any payment to Melcourt or announces that it is ceasing to trade, suspends payments and/or notifies any of its creditors that it is unable to meet debts or that it is about to suspend payment of its debts or enter into a composition or arrangement with or makes assignment for the benefit of its creditors or a receiver is appointed to the Buyer's property or assets or any part thereof or that a Court order is made or a resolution passed for the winding up of the Customer (being a Limited Company) except for the purposes of reconstruction or amalgamation or that the Buyer commits any act of bankruptcy. Melcourt consent to the Buyer's possession of Melcourt's goods shall cease and Melcourt shall be entitled forthwith to enter the Buyer's premises and to repossess its goods.

d. In the event that before the property in the goods has been passed to it the Buyer resells the same, such resale shall be treated as a sale by the Buyer as Agent for Melcourt and the Buyer shall be liable to account to Melcourt for the proceeds of all such sales. Upon paying all his indebtedness to Melcourt, the Buyer shall be entitled to retain the balance (if any) of such proceeds as its agreed commission on the sale. The proceeds of sale of such goods by the Buyer when acting as agent for Melcourt shall be placed by the Buyer in a separate bank account expressly for the benefit of Melcourt.

e. Without prejudice to the Buyer's continuing obligation to pay Melcourt for any goods he has resold prior to making such payment the Buyer, if he does not receive the proceeds of such re-sale will, if so requested by Melcourt, transfer to Melcourt all rights of recovery he may have against the purchaser. Melcourt undertakes to account to the Buyer any sums received from such sub-purchase in excess of amounts due by the Buyer to Melcourt.

## 5. Buyer's Default

In the event of the Buyer failing to accept deliveries or failing to pay for the storage of the material (whichever is its duty under the Contract) by the last day of the Contract period otherwise than as a result of force majeure, the quantity not delivered against the mean Contract quantity shall be deemed in default.

a. Sell the goods at the market price for the account of the Buyer and may charge rent, interest and any other reasonable expenses and deduct these from any sum so realised prior to paying any balance over to or claiming from the Buyer; or

b. Claim damages to be settled by arbitration, such damages not to exceed the differences between the contract price and the market price on the day of default, this being the day after the last day on which the Contract could have been performed.

## 6. Payment Terms

a. All goods will be quoted for and priced net, VAT will be added at the rate prevailing at the date of the invoice when rendered.

b. Payment is due on the date shown on the invoice hereinafter referred to as the due date. If, after the due date any amount due shall remain unpaid, Melcourt may, having so informed the Buyer in writing and at his sole discretion, charge interest on the principal sum due up to a maximum of 5% above the Barclays Bank plc base rate for the time being in force. If payments are not received by the due date, then any discretionary discount that had been allowed and the full invoice price will be due.

c. Any option granted by Melcourt to the Buyer under this clause whether expressed to be credit charge, interest or otherwise is granted without prejudice to Melcourt's right to demand immediate payment of the full or any lesser amount together with any credit charges and interest accrued after the due date.

d. No variation of these payment terms shall be valid unless confirmed by Melcourt in writing.

## 7. Sales by Volume

a. It is understood that where Melcourt is supplying fragmented bark, wood particles or organic materials, the quantities supplied shall not be measured in weight, but by volume and variation in weight within normal commercial limits will not justify a complaint in respect of shortfall in the delivery and no price reduction in respect thereof.

b. The volume supplied is measured at the loading point by Melcourt according to a standard procedure, specific details of which are available from the Company on request.

## 8. Security

Melcourt will be entitled at any time to require a Buyer to provide financial status and/or security for purchase price unpaid and in the event of a Buyer being unable to provide suitable references and guarantees or security, Melcourt will be entitled to withdraw from any existing contracts without liability.

## 9. Force Majeure

In the event of war, invasion, act of foreign enemy hostilities (whether war has been declared or not) civil war, rebellion, revolution, insurrection or military or usurped power, the Seller shall be relieved of liabilities incurred under this contract wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event or by any statute rules, regulations, orders or requisitions issued by any Government department, council or other duly constituted authority or from strikes, lockouts, breakdowns of plant or any other causes (whether or not of a like nature) beyond the Seller's control.

## 10. Law

The Contract shall be governed by English Law.

## 11. Arbitration

All disputes, differences or questions at any time arising between the parties as to the construction of the Contract or as to any matter or thing arising out of the contract or in any way connected therewith shall be referred to the arbitration of a single arbitrator who shall be agreed between the parties or who failing such agreement shall be appointed at the request of either party by the National Chairman of the British Association of Landscape Industries (BALI). Costs of any such arbitration to be met equally

