

Terms & Conditions of Sale

1. Applicability

- These Terms and Conditions apply to all offers and agreements between FitzGerald Nurseries Ltd, hereinafter FITZGERALD and its customers.
- Applicability of any (purchase) conditions of the customer is explicitly rejected by FITZGERALD.
- Any differing stipulations and oral agreements are only applicable between the parties after they have been laid down in writing by the authorized representatives of FITZGERALD and the customer.

2. Offers, Prices and Order documents

- All offers of FITZGERALD are without engagement, unless otherwise stated on the offer. The offered prices are valid for 4 weeks from the date of the offer. An offer without engagement can be withdrawn by FITZGERALD up to five business days following receipt of the acceptance and/or placing of the order.
- Unless stated otherwise the prices are in € and exclusive of VAT, packaging costs, Phytosanitary inspection costs, import and export duties, shipment and customs fees, taxes of government and agencies, as well as any other fees and costs for delivery Ex works. License fees (Royalties) are listed separately if applicable.
- The customer shall state in writing with his order or at first request of FITZGERALD which data, specifications and documents are required under the regulations of the country where the delivery will take place, such as in regard of invoicing, phytosanitary requirements, international certificates and/or other import documents or import statements.
- If an agreement with the customer is concluded by the intervention of agents, traveling salespersons and/or other intermediaries and/or resellers, then they will only bind FITZGERALD after they have been accepted in writing by FITZGERALD.
- FITZGERALD is entitled to adjust the price as far as reasonable and fair if costs have increased to a considerable level since the determination of the price.

3. Delivery, Shipment, Cancellation

- Delivery will take place EX WORKS unless otherwise agreed. The risk of damage or loss of the ordered products will transfer to the customer on the moment that the products have left the premises of FITZGERALD or any of his subcontractors.
- If FITZGERALD is left to arrange the shipping on behalf of the customers, then this will be carried out in the manner most suitable in the view of FITZGERALD. Additional costs because of special requirements of the customer relating to the shipment will be charged to the customer.
- The stated delivery times are approximate. FITZGERALD cannot be liable for delays in transit of the goods.
- FITZGERALD will do its utmost to supply the agreed quantities and qualities of products in the agreed time frame. However, it is accepted by the customer that we are dealing with a natural, living product where issues can arise which are out of FITZGERALDS control.
- If the customer does not take his order in a timely manner, he will be in default without any notice of default being required. The customer bears the risk of any deterioration or loss of the product under those circumstances. FITZGERALD is entitled to store the product at customers costs or to sell it to a third party – whatever is more appropriate in FITZGERALDS view. The customer will still owe the purchase sum plus any interest, maintenance, and storage costs minus the net revenue if the product was sold to a third party.
- In the case of a cancellation of the agreement (or a substantial part thereof) by the customer FITZGERALD reserves the right to invoice the customer as follows:
 - 25% of the gross value of the product to be supplied for cancellation 12-6 months before the agreed delivery week
 - 50% of the gross value of the product to be supplied for cancellation 6-3 months before the agreed delivery week
 - 100% of the gross value of the product to be supplied for cancellation 3 months or less before the agreed delivery week.
- If the customers collects the ordered products before the agreed week of delivery the resulting risk will be fully borne by customer.
- The minimum order quantity of 9cm liners is 24 per variety – 24-unit shuttle tray is used. The minimum order quantity of 3.5cm plugs is 84 per variety, of 2.0cm plugs is 126 per variety and of 8cm plugs is 28 per variety.
- New customers wishing to open an account will be asked to complete a credit application form and provide verifiable trade references and VAT number if registered. They will be also asked for payment by pro-forma invoice in advance of delivery of first order.
- Our preferable mode of transport is on CC tagged Danish trolley system on an exchange basis. CC trolleys and shelves must be available in all circumstances for this system. The used propagation

and shuttle trays cannot be returned and need to be disposed off/recycled by the customer.

- If the CC system cannot be used for transport alternative options can be considered but will be charged to the customer at cost.

4. Payment

- FITZGERALD is entitled to claim from any customer an advance payment of 100% of the invoice sum
- The customer will pay all invoiced amounts in the currency stated on the invoice, including VAT if applicable, without any discount, deduction, set-off or suspension, within 30 days following the date of invoice.
- Where customers go beyond the terms of credit stated above FitzGerald Nurseries Ltd reserves the right to charge interest charges in accordance with The [European Communities \(Late Payment in Commercial Transactions\) Regulations 2002](#) (SI 388 of 2002). In areas not covered by EU legislation this regulation will be used as the contractual reference point. This rate of interest is the ECB late financing Rate plus 7 percent. This amounts to 0.026% per day overdue.
- The company reserves the right to recover cost of collection of overdue amounts in accordance with The [European Communities \(Late Payment in Commercial Transactions\) Regulations 2002](#) (SI 388 of 2002).
- FITZGERALD reserves the right to withhold or cancel deliveries to any Customer who has failed to settle any outstanding sum on their account without being held liable for any damages this may cause the customer.

5. Reservation of Title

- FITZGERALD retains ownership and beneficial of all plants supplied until such time as payment is made in full by the customer. All orders accepted are accepted with this understanding.
- In case of non-payment FITZGERALD is entitled to reclaim the goods from the customer. The customer commits himself to do so and he is not entitled to claim any form of compensation.
- Furthermore, the reservation of title will apply to claims which FITZGERALD may have against the customer buy reason of failure of the customer in one or more of his obligations towards FITZGERALD.
- Goods supplied by FITZGERALD and/or goods produced from the supplied products from FITZGERALD which fall under the reservation of title will always be stored/maintained and/or used in such a manner that the goods are easy to identify as property of FITZGERALD and are only allowed to be re-sold or used with the context of normal conduct of business.
- The customer is not allowed to pledge or vest any other right in the supplied products.
- FITZGERALD is entitled to remove directly or via a third party the product from the customers company sites after a default has occurred from the customer because of non-payment of his obligations and the customer will cooperate in this.

6. Complaints

- Complaints relating to visible flaws, including complaints about quantities, size, or weight of the products, must be registered in writing within seven days of delivery date or before where obvious problems occur.
- Complaints should be communicated to FITZGERALD in a manner that FITZGERALD can verify the origin of the plant material.
- In any event a complaint should include:
A complete and accurate description of the flaw
A description of the location where the goods are held including temperature levels, light levels and any other relevant information regarding the environment of the goods
Pictures of the damaged goods
Quantification of the problem
- Complaints about a part of the delivered goods cannot be reason for rejection of the entire delivery by the customer.
- The customer has the duty to check the delivery upon arrival for its completeness and report any issued immediately to FITZGERALD.
- Expressing a complaint does not suspend the payment obligation of the customer regardless whether a complaint is founded or not.
- If delivered products are rejected by the customer under the provisions of this section and the customer and FITZGERALD do not agree immediately on a settlement, then an independent expert must be appointed to draw up a survey of damage. The costs for this survey are covered by FITZGERALD if the complaint of the customer is legitimate and they are covered by the customer if the complaint of the customers is illegitimate.

7. Guarantee, Limitation of liability and Indemnification

- FITZGERALD makes every effort to ensure that plants dispatched are of good quality and true to type. However, in the case of a claim FITZGERALD liability shall not exceed the invoice price

(excl. VAT) of the goods in question.

- FITZGERALD cannot be held liable for any indirect damage, consequential damage, loss of profit, loss of economies, loss of goodwill, damage by reason of business stagnation, loss as a result of harm or loss of growing, harvested or other plant material. This includes indirect damages regarding the choice of growing environment and growing method, varietal properties (known or unknown at the time of delivery), susceptibility for pathogens and/or chemical treatments.
- The plant material supplied by FITZGERALD meets common ENA quality standards. However, the customer acknowledges that the plants material supplied may vary as it is a natural product. The customer cannot expect that all products will meet all quality standards all the time.
- The customer accepts that he will use the supplied products fully at his own risk. FITZGERALD does not guarantee growth, flowering, fruiting and/or harvesting of the products. FITZGERALD assumes that the customer has knowledge of the matter.
- All advice given by FITZGERALD and his staff are without engagement. Growing advice, variety descriptions, recommendations, and illustrations, in whatever format, are given to our best knowledge, however FITZGERALD cannot be held liable if the given advice does not achieve the customers expectations. The customer himself should be responsible for the final choices he is taking regarding the supplied products.
- The customer holds FITZGERALD harmless for all third-party claims for damage arising or otherwise related to products supplied by FITZGERALD including claims filed against FITZGERALD in its role as producer of the goods unless such damage is the result of intent or gross negligence of FITZGERALD.

8. Force Majeure and Dissolution

- Force majeure is understood to mean: any circumstance falling outside the direct control of FITZGERALD, as a result of which performance of the agreement can no longer be expected in reasonableness, such as strikes, fire, extreme weather conditions or government measures, force majeure at suppliers of FITZGERALD, plant diseases, plagues, growth disorders which are hard to explain during the breeding and/or production process at FITZGERALD, including also crop failure in tissue culture breeding, seedling production, seed production and/or poorly sprouting seeds, as well as falling out during rooting in tissue culture or rooting in green houses both at its own site, and at the site of a third party or supplier contracted by FITZGERALD, or any other force majeure situations common in the industry.
- In case of force majeure the performance of an agreement will be suspended for the part in question. If it is not possible for FITZGERALD in case of force majeure to deliver the ordered quantities, then it is also entitled to reduce the quantities to be delivered and/or to dissolve the agreement (in full or in part). In case of partial performance by FITZGERALD the customer will owe a proportionate part of the agreed price.
- If suspension as referred to above has lasted for over 3 (three) months or if in the view of both parties it is already a fact beforehand that it will last for over 6 (six) months, either party may dissolve the agreement as far as the force majeure situation justifies, by registered letter taking effect immediately, without the other party being held to pay any compensation.
- FITZGERALD is not liable for the damage which the customer incurs as a result of non-delivery or not timely delivery as a result of force majeure, nor in case of any subsequent (partial) dissolution by FITZGERALD.
- If the customer does not, not duly or not timely perform one or more of his obligations, is declared bankrupt, applies for (temporary) suspension of payment, proceeds to wind up his company, as well as if his assets are attached in full or in part, FITZGERALD is entitled to stay the performance of the agreement or to dissolve the agreement without any prior notice of default, in full or in part, all this at its own discretion and always while preserving any entitlement of it to compensation of costs, damage and interest.

9. Intellectual Property Rights

- Plant material of varieties which enjoy protection by reason of any intellectual property right (such as national or Community plant variety rights and/or patent rights, or applications for this) or by means of a contractual (perpetual) clause, shall not a) be used for the propagation or further breeding of the variety, b) be treated for the sake of breeding, c) be marketed, d) be resold, e) be exported, f) imported, g) be used for production of cut flowers, or kept in stock for any of the acts referred to in a) to g), except prior to written approval. The customer will include this provision as written perpetual clause in further transactions with third parties regarding such protected varieties.
- The varieties marked with the prefix PBR by FITZGERALD are protected by European Plant Breeder's Rights or any other form of intellectual property rights. However, FITZGERALD is not liable for any incorrect information provided relating to the status of such protection. In case of non-grant, lapse, annulment, or invalidation of any intellectual property right relating to any variety or other product, the customer is not entitled to refund of sums or royalties already paid to

FITZGERALD or any other form of damages or compensation.

10. Mutations

- If the customer discovers a mutation, variation, sport or other genetic and/or morphologic modification (regardless whether it has come about spontaneously or artificially) in the plant material of a variety protected by intellectual property rights and delivered by FITZGERALD (referred to as: "Mutant"), it shall inform FITZGERALD of this immediately in writing.
- At the first written request of FITZGERALD the customer will submit test material of the Mutant to FITZGERALD within a period of two weeks following receipt of such request.
- Furthermore, customer will transfer the property of all the plant material of the Mutant to FITZGERALD at the first written request of FITZGERALD. Subsequently, FITZGERALD will substitute said plant material free of charge for plant material of the variety which the agreement relates to.

11. Other Provisions

- If and in so far as any part or any provision of this agreement conflicts with any mandatory provision of national or international law, then it will be considered as not having been agreed to and the remainder of this agreement will remain binding on the parties. The parties are then required and obligated towards one another to replace the invalid provisions(s) with another that corresponds with the intentions of the parties and as such can be agreed to by them.

12. Applicable law and Choice of court

- This agreement shall be governed and construed in all respect with the law of the Republic of Ireland. All disputes resulting from or related to this agreement shall be settled only by the authorised Court in the District of Kilkenny, Ireland.