



PART C

POLKADRAAI NURSERY (PTY) LTD t/a SHADOWLANDS WHOLESALE NURSERY

Standard Terms and Conditions of Sale

1. Application

- 1.1. This document sets out the standard terms and conditions ("the conditions") upon which we (Polkadraai Nursery (Pty) Ltd t/a Shadowlands Wholesale Nursery) do business and you (the Customer) agree to accept these conditions.
- 1.2. You agree and understand that even if you do not sign this document, by placing an order with us and/or accepting delivery from us, you will be deemed to have accepted the conditions.
- 1.3. The conditions set out in this document apply from 01 October 2015 and replace any previous conditions which may have been in effect.
- 1.4. We may change these conditions at any time without having to give you advance notice.

2. Trade Only

- 2.1. We are a trade only wholesale supplier. As such, we only supply legitimately registered nurseries, garden centres, retail outlets, municipalities, landscape contractors, landscape gardeners, landscape architects, property developers, homeowners' associations, schools, commercial farms and government. We do not supply private individuals, end use consumers or homeowner association members.
- 2.2. All Customers will be required to complete a Customer Application Form and register with us before purchasing.
- 2.3. We reserve the right to request you to show us some form of proof that you are in the trade, before we agree to supply you with any products.
- 2.4. As a registered customer you are welcome to visit our nursery at any time during our operating hours and we will endeavour to assist you.

3. Orders

- 3.1. Orders can be placed with us by phone, SMS, WhatsApp, e-mail or verbally at our premises.
- 3.2. You need to quote your Customer number when placing an order.
- 3.3. Your order will be deemed to have been accepted by us upon receipt, unless we tell you otherwise at the time of receiving your order.
- 3.4. We regularly update Availability Lists detailing available stock. While we try to be as accurate as possible, we give no warranty that any goods will be available in stock at the time your order is drawn.
- 3.5. If you order something that we do not have in stock, we will be unable to supply you with that item and we will advise you accordingly.
- 3.6. You should place orders as least two days before required, to allow us sufficient time to draw stock, label, load and dispatch.
- 3.7. We will only hold collection orders for seven days before returning the items to stock. If you have not made prior arrangements in writing to extend the collection period you may, within our discretion, be charged an additional 10% handling fee.

4. Price

- 4.1. All our prices are quoted exclusive of value added tax (Vat) but include delivery within the free delivery area, provided the value of the order exceeds R1,000.00.
- 4.2. Orders under R1,000.00 in value are subject to a delivery fee.
- 4.3. Where you have made arrangements to collect, provided the value of your order exceeds R1,000.00 and payment is received on collection your order will qualify for a 10% discount.
- 4.4. All our prices are subject to alteration at any time without us having to give you advance notice.

5. Payment

- 5.1. All goods are supplied COD (cash on delivery) unless otherwise agreed.
- 5.2. If you have a 7 day (seven) or 30 day (thirty) account (credit facility) with us, payment must be made within 7 or 30 days from date of invoice as the case may be.

- 5.3. If you have a credit facility with us, you will be bound by both these conditions and the additional Credit Terms contained in your credit application.
- 5.4. Credit facilities are granted by us within our sole discretion and we may alter, suspend or withdraw credit facilities at any time.
- 5.5. If you do not make payment on or before the due date, we reserve the right to charge interest at the maximum amount permitted by law from time to time, calculated from the due date until date of payment.
- 5.6. All amounts due to us are payable on due date without demand, deduction or set-off in South African Rands either in cash, by bank guaranteed cheque or by electronic funds transfer.
- 5.7. We have card facilities at our premises, and you may pay by credit or debit card or Snapscan.
- 5.8. Direct payments into our bank account must be made to the following account:
Name: Polkadraai Nursery (Pty) Ltd t/a Shadowlands Wholesale Nursery
Bank: Standard Bank of South Africa
Branch: Cape Gate
Branch Code: 050 410
Account No: 270 784 314
Reference: Your quotation, Invoice or Customer account number
- 5.9. Where you make direct payment to us, the onus rests on you to provide proof of payment.
- 5.10. Proof of payment can be sent by email to sales@shadowlands.co.za or accounts@shadowlands.co.za
- 5.11. We reserve the right not to release or deliver goods until payment has reflected in our bank account.
- 5.12. You understand that we may, within our sole discretion, allocate any payment made by you, towards any amounts owing to us.
- 5.13. A remittance advice must be supplied if more than one invoice has been paid.

6. Delivery

- 6.1. We will notify you by telephone, SMS or e-mail, when your order is ready for collection or delivery.

- 6.2. We will deliver orders over R1,000.00 in value free of charge to your premises in the following areas:
- 6.2.1. In the Overberg, as far as Gansbaai;
 - 6.2.2. Up the West Coast, as far as Vredenburg;
 - 6.2.3. Inland, as far as Worcester on the N1 and Robertson on the R60.
- 6.3. You accept that delivery to you will be deemed to have taken place:
- 6.3.1. When unloading commences, if the goods are physically delivered by us to you;
 - 6.3.2. When loading commences at our premises, if you or your agent is collecting the goods, and;
 - 6.3.3. You or your agent has signed the delivery note.
- 6.4. We will deliver the goods to the premises specified in your order, unless you specify that you will collect the goods.
- 6.5. While we will try to deliver within 2-3 days of you placing an order, you understand and agree that any delivery dates given by us are estimates only and that no exact delivery date has been agreed upon. We will not be liable for any loss or damage you may suffer, where such loss or damage is beyond our reasonable control, as a result of the goods not being delivered on the estimated delivery date.**
- 6.6. Deliveries will be offloaded onto the pavement, in an area which is easily accessible at your premises; our driver will determine, in his sole discretion where it is safe to drive and to offload. We will not be responsible for carrying the goods further, unless prior written arrangements have been made with, and confirmed by our office.
- 6.7. Unless you notify us, in writing, within two days of taking delivery of the goods of any defect in the goods, then the goods will be deemed to have been in good order at the date of delivery.**
- 7. Ownership and Risk**
- 7.1. Ownership of all goods sold by us, will remain vested in us until paid for in full.
 - 7.2. Risk in and to all goods sold by us will transfer from us, to you upon delivery taking place.

8. Returns

8.1. We will not accept returns for credit or refund of any goods that were specially grown or procured for you (Special Orders) or of goods that have an expired shelf life date.

8.2. We may agree, but are not obliged, to accept the return of goods that were correctly supplied by us in accordance with your order, in which event the following will apply:

8.2.1. Unless otherwise agreed to by us, in writing, the returns must be made within ten days of your having taken delivery of the goods;

8.2.2. You must obtain our written authorisation to return the goods;

8.2.3. The returned goods and their packaging/containers must be in resalable condition as determined by us within our sole discretion;

8.2.4. The returned goods must be accompanied by a copy of the invoice or delivery note as proof of purchase;

8.2.5. We reserve the right to charge a 10% handling fee, based on the value of the goods, as per the original invoice;

8.2.6. We, in our sole discretion, may elect to give you a credit note;

8.2.7. If the price of the goods has changed between the date of purchase and the date of return, any refund or credit note will be on the lesser of the current price or original invoice price.

8.3. While you are entitled to return any defective goods, you understand that a failure by you or your customer to properly care for and water a plant, does not amount to a defect in the goods entitling you to return it.

9. Warranty

9.1. We warrant that all plants supplied by us, will substantially comply with any properties that may be contained on any Technical Data Fact Sheet issued by us from time to time relating to that specific plant.

9.2. You specifically understand and agree that we give no warranty or guarantee to you, of any kind whatsoever, regarding the fitness, suitability, growth properties, lifespan or performance of any goods supplied to you by us, other than what can reasonably be expected of a product of this nature.

10. Liability

10.1. We (including our directors, managers, employees and agents) are not liable for any loss or damage, which is beyond our control, whether direct, indirect, consequential or otherwise suffered by you or your customer, arising from any cause in connection with any business or transaction you enter into with us.

11. Breach

11.1. You acknowledge that you will be in breach of the agreement between us if:

11.1.1. You fail to pay any amount due to us on the due date, or;

11.1.2. You are sequestrated or liquidated (regardless of whether provisional or final), or;

11.1.3. You commit any act of insolvency as defined in the Insolvency Act, or;

11.1.4. You enter into any arrangement or compromise with your creditors generally, or;

11.1.5. you fail to satisfy any judgment against you within 14 days of the date of judgment, or;

11.1.6. You fail to adhere to any of the other terms and conditions of this agreement, all of which you agree to be material, and remain in breach seven days after receiving notice to remedy such breach.

11.2. You further acknowledge that if you are in breach of the agreement between us, then:

11.2.1. Any amounts owing by you to us will immediately become due and payable even if it would not yet ordinarily be due, and;

11.2.2. We may suspend all further deliveries to you and/or cancel any existing orders not yet supplied, and;

11.2.3. We may cancel our agreement with, you without notice and without prejudice to any other legal remedies available to us.

12. Consumer Protection Act

12.1. You understand that if you are a legal person (such as a company or CC) and your annual turnover exceeds R2 million or if the total value of your assets exceeds R2 million, then you do not fall within the definition of a Consumer as defined in the Consumer Protection Act 68 of 2008 ("the CPA") and the protections afforded to Consumers by the CPA will not apply to you.

12.2. You agree to immediately advise us should your circumstances change so that you fall within the definition of a Consumer in terms of the CPA.

12.3. If you are a natural person or if you are a legal person with a turnover under R2 million per year and an asset value under R2 million, then you are a Consumer and the protections of the CPA apply to you.

13. Complaints Process

13.1. We are committed to giving you quality service and work hard to ensure that we exceed your expectations.

13.2. If you have any complaint, please contact us on (021) 903-0050 or e-mail gaye@shadowlands.co.za and we will acknowledge your complaint in writing, within three business days and we will do our best to resolve your complaint within 14 days.

13.3. If you are a Consumer under the CPA,, you are entitled to refer any complaint against us to the Consumer Goods and Services Ombud, who can be contacted on 0860 000 272 or by e-mail at info@cgso.org.za, who will intervene on your behalf.

14. General

14.1. This agreement will be governed by the laws of South Africa.

14.2. We choose the address on the first page of the Customer Registration form and you choose the address you have given us on your Customer Registration Form as your chosen address of service, for legal documentation and notices for all purposes arising from the agreement between us and you agree to advise us in writing, of any change in your address or contact details.

14.3. You agree that a certificate signed by any of our directors or duly authorised person, reflecting the amount due and payable to us by you, will be sufficient and satisfactory proof thereof for the purposes of any legal proceedings arising from the agreement between us and you.

14.4. Any change to this agreement will only be valid if in writing and signed by both you and us.

14.5. In the event of our having to institute legal action against you to recover any amount due to us or to enforce any of our rights under this agreement, you agree to be liable

for our legal costs on a scale as between attorney and own client including any collection commission.

- 14.6. No act of grace, relaxation or indulgence granted by us to you will in any way operate or be deemed to be a waiver of our rights under this agreement.
- 14.7. This agreement constitutes the entire agreement between you and us, with regard to the matters dealt with herein and no representations, terms, conditions or warranties, express or implied, not contained in this agreement will be binding on you or us.
- 14.8. If any clause, term or provision contained in this agreement (or any part thereof) shall for any reason whatsoever be declared or become invalid, illegal or unenforceable (the "offending provision") the other clauses, terms and provisions contained in this agreement will remain in full force and effect as if this agreement had been executed without the offending provision therein.
- 14.9. We agree not to give your information to anyone else, unless required by law and you agree that we may send you marketing information from time to time by SMS or e-mail, until you instruct us otherwise in writing.