

Tom Brown Wholesale Florist Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "Wholesaler" shall mean Tom Brown Wholesale Florist Ltd its successors and assigns or any person acting on behalf of and with the authority of Tom Brown Wholesale Florist Ltd. The Wholesaler only sells Goods to other businesses approved by the Wholesaler.
- 1.2 "Customer" shall mean the business entity described on the invoices, application for credit, or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of the business Customer. The Customer warrants that they are not private individuals or consumers.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Wholesaler to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the website www.tombrownwholesale.com, invoices, quotation or any other forms as provided by the Wholesaler to the Customer.
- 1.5 "Services" shall mean all services supplied by the Wholesaler to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Wholesaler and the Customer subject to clause 5 of this contract.
- 1.7 "Website" shall mean www.tombrownwholesale.com, any subsequent domain URL that may replace it and any other online purchase website leading directly from www.tombrownwholesale.com.

1.8 The Electronic Commerce (EC Directive) Regulations 2002

- 1.9 The following information about the Wholesaler as required by the above regulations is outlined below:

- (a) Wholesaler's trading address: 30 Chiltonian Industrial Estate, Manor Lane, Lee, London SE12 0TX
- (b) Wholesaler's Companies House number: 06677253
- (c) Wholesaler's VAT Registration number: 299402917
- (d) Wholesaler's telephone number: 0208 852 2200
- (e) Wholesaler's facsimile number: 0208 852 2204
- (f) Wholesaler's e-mail address for notices: flowers@tombrownwholesale.com

2. Ordering Process

- 2.1 As part of the ordering process, the Customer is required to complete an online registration form. This will help the Wholesaler to understand your requirements more fully and help ensure that correct Goods are supplied. The Customer's contact details also help facilitate any follow-up calls as necessary and also streamline the delivery and invoicing processes. Customers can then place an order for Goods through the online stores available via the Website. Customers confirm their order by placing the required Goods into the online shopping 'basket'. The Wholesaler will send an e-mail (to the Customer's e-mail address submitted during registration) confirming that the order is being processed subject to clause 2.3. The Customer agrees to print out this order confirmation message and these terms and conditions.
- 2.2 Customers understand that in the following instances, and at the Wholesaler's sole discretion, the Wholesaler may not be able to accept the order when:
- (a) the Goods selected by the Customer are not available (subject to section 3. Substitution of Goods); and/or
- (b) the Goods are available but do not meet the quality standards of the Wholesaler (subject to section 3. Substitution of Goods); and/or
- (c) there has been an inadvertent pricing or product description error; and/or
- (d) the Wholesaler perceives that the Customer has made an ordering mistake e.g. where the order is either unusually low or unusually high based on previous Customer behaviour; and/or
- (e) Goods are ordered outside of the published ordering and cut-off times (see clauses 6.4 to 6.6 for details).
- 2.4 If the order cannot be accepted the Wholesaler will inform Customers by phone or by e-mail as soon as it is reasonably possible and before the end of the following working day. If the Wholesaler cannot supply a suitable alternative, any money paid for the failed order will be reimbursed within 30 calendar days.

3. Substitution of Goods

- 3.1 The Customer understands that the Wholesaler's operations extend to fast-moving and time-limited markets of perishable Goods in continental Europe outside normal office hours. As it is often not practical to contact Customers in the early morning hours or late at night to discuss the availability of ordered Goods and variations to orders, a Substitution Policy is agreed with Customers beforehand as set out below.
- 3.2 Subject to the scope outlined in clause 3.3, the Customer agrees that the Wholesaler may deliver substitute Goods where the market availability of perishable Goods ordered by the Customer is limited by quantity or quality.
- 3.3 Further to 3.2, the scope of allowable substitutions is limited to:
- (a) variability in the length of stems of ordered flowers/plants; and
- (b) variations in the colour of ordered flowers/plants.
- 3.4 In the case of 3.3, the Wholesaler will use its judgement to source and deliver the closest possible match between the stem lengths and colour of Goods ordered by Customers and those which are available in the wholesale market.
- 3.5 The Wholesaler's Substitution Policy does not extend to plants or flowers of different types or species (e.g. roses for daffodils).
- 3.6 If the Customer does not wish the Wholesaler to substitute Goods in the manner described above, the Customer agrees to inform the Wholesaler in advance of placing an order on this Website.
- 3.7 Customers may also opt out of the Wholesaler's Substitution of Goods Policy at the time of placing their order by leaving a clearly-worded comment in the 'Remarks' area on-screen during the ordering process.
- 3.8 Customers may also opt out completely from the Wholesaler's Substitutions Policy. To opt out, Customers agree to write to the Wholesaler in advance to flowers@tombrownwholesale.com.

4. Acceptance

- 4.1 Any instructions received by the Wholesaler from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Wholesaler shall constitute acceptance of the terms and conditions contained herein.
- 4.2 The Customer's order represents an offer to the Wholesaler to purchase Goods. As soon as the Customer clicks on the 'Proceed' button within the order form, the Customer is bound by the Wholesaler's terms and conditions. The Wholesaler's acceptance of the order takes place only when the Wholesaler has despatched the chosen Goods to the Customer.
- 4.3 The purchase contract will be made when the Wholesaler despatches the ordered goods to the Customer and not before. The Wholesaler will not despatch the Goods if the Wholesaler has informed the Customer in writing that the Wholesaler is unable to accept the order for the reasons explained in clause 2.3.
- 4.4 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 4.5 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Wholesaler.
- 4.6 The Customer undertakes to give the Wholesaler at least fourteen (14) days prior notice of any change in the Customer's name, address and/or any other change in the Customer's details.

5. Price And Payment

- 5.1 The Price shall be either:
- (a) as indicated on invoices provided by the Wholesaler to the Customer in respect of Goods supplied; or
- (b) the Wholesaler's quoted Price (pre VAT) on the website subject to clauses 5.2 & 5.3. Prices are 'live' which means that they change frequently in line with wider market price movements. The Customer understands and agrees that whilst the Price for goods ordered will be correct on the Wholesaler's website at the time of ordering by the Customer, the Price for the same Goods may be different if ordered minutes beforehand or afterwards.
- 5.2 The Wholesaler reserves the right to change the Price in the event of a variation to the Wholesaler's quotation.
- 5.3 For approved Customers time for payment for the Goods shall be of the essence and will be stated during the online ordering process or on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice unless otherwise agreed between Wholesaler and Customer.
- 5.4 At the Wholesaler's sole discretion a small credit limit may be allocated to non-approved Customers. Alternatively, Customers (trade only) may purchase Goods in person by visiting the Wholesaler's warehouse at the address detailed in clause 1.9 (a).
- 5.5 At the Wholesaler's sole discretion payment shall be due on delivery of the Goods.
- 5.6 The Prices visible whilst browsing our website are exclusive of VAT and delivery charges. As soon as Goods are selected and added to the online shopping 'basket', the Price will include VAT together with any other taxes and duties and delivery charges that may apply.
- 5.7 Payment will be made by cash, or by cheque, or by any major debit card or credit card (including American Express and Diners Club), or by direct credit, or by BACS, or by any other method as agreed to between the Customer and the Wholesaler.

6. Delivery Of Goods

- 6.1 At the Wholesaler's sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at the Wholesaler's address; or
- (b) the Customer takes possession of the Goods at the Customer's address or other address nominated by the Customer (in the event that the Goods are delivered by the Wholesaler or the Wholesaler's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 6.2 At the Wholesaler's sole discretion the costs of delivery are:
- (a) specified separately and in addition to the Price; or
- (b) for the Customer's account.
- 6.3 Delivery charges are £15 (plus VAT) for orders priced below £150 in total (pre VAT) and £3 (plus VAT) for all orders with a total price of £150 or more (pre VAT).
- 6.4 Orders for Goods which include flowers and plants (usually sourced from Holland) and ordered between 1 a.m. and 11 a.m. on each working day will be delivered to UK mainland addresses the following working day and Saturday. Orders placed for the same Goods over the weekend will be delivered on the following Tuesday.
- 6.5 Orders for Goods which include flower-related and plant-related sundries (usually stocked from London and/or the wholesaler) and ordered between 1 p.m. and midnight on each working day will usually be delivered to UK mainland addresses on the following working day. Orders for the same Goods made during the weekend ordering window of Saturday 1p.m. to Sunday midnight will usually be delivered on the following Monday.
- 6.6 No delivery will be made on Sundays or Bank Holidays and delivery to remote rural areas may incur additional delivery charges.
- 6.7 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Wholesaler shall be entitled to charge a reasonable fee for redelivery.
- 6.8 The Wholesaler may deliver the Goods by separate instalments.
- 6.9 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 10%; and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.10 The failure of the Wholesaler to deliver shall not entitle either party to treat this contract as repudiated.
- 6.11 The Wholesaler shall not be liable for any loss or damage whatsoever due to failure by the Wholesaler to deliver the Goods (or any of them) promptly or at all.

7. Risk

- 7.1 If the Wholesaler retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Wholesaler is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Wholesaler is sufficient evidence of the Wholesaler's rights to receive the insurance proceeds without the need for any person dealing with the Wholesaler to make further enquiries.

8. Title

- 8.1 It is the intention of the Wholesaler and agreed by the Customer that ownership of the Goods shall not pass until:
- (a) the Customer has paid all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to the Wholesaler in respect of all contracts between the Wholesaler and the Customer.
- 8.2 Receipt by the Wholesaler of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Wholesaler's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- (a) where practicable non-perishable Goods shall be kept separate and identifiable until the Wholesaler shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of any non-perishable Goods shall pass from the Wholesaler to the Customer the Wholesaler may give notice in writing to the Customer to return the non-perishable Goods or any of them to the Wholesaler. Upon such notice the rights of the Customer to obtain ownership or any other interest in the non-perishable Goods shall cease; and
- (c) the Wholesaler shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return non-perishable Goods to the Wholesaler then the Wholesaler or the Wholesaler's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the non-perishable Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Wholesaler has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Wholesaler; and
- (f) the Customer shall not deal with the money of the Wholesaler in any way which may be adverse to the Wholesaler; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Wholesaler; and
- (h) the Wholesaler can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

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- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Wholesaler will be the owner of the end products.
- 9. Defects**
- 9.1 The Customer shall inspect the Goods on delivery and shall within twenty-four (24) hours notify the Wholesaler of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Wholesaler an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Wholesaler has agreed in writing that the Customer is entitled to reject, the Wholesaler's liability is limited to either (at the Wholesaler's discretion) replacing the Goods or repairing the Goods.
- 9.2 No Goods shall be accepted for return except in accordance with 9.1 above.
- 10. Returns**
- 10.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 9.1; and
 - (b) the Wholesaler has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost as soon as possible and within a maximum of forty-eight (48) hours of the delivery date; and
 - (d) the Customer understands that returned perishable Goods will not be able to be easily resold by the Wholesaler or if at all that this will reduce the value of the returned Goods and reduce the level of credit that can be given to the Customer.
 - (e) the Wholesaler will not be liable for Goods which have not been stored or used in a proper manner; and
 - (f) the Goods are returned in as close as possible to the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.
- 10.2 The Wholesaler will not accept the return of non-defective Goods for credit.
- 10.3 The Wholesaler may (at its discretion) accept the return of non-defective Goods for credit or refund but this may incur a handling fee of 10% of the Price of the returned Goods plus any return delivery charges.
- 11. Warranty**
- 11.1 To the extent permitted by statute, no warranty is given by the Wholesaler as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Wholesaler shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 12. Default & Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 12.2 The Wholesaler may charge interest on overdue invoices in accordance with The Late Payment of Commercial Debts Regulations 2013.
- 12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Wholesaler from and against all costs and disbursements incurred by the Wholesaler in pursuing the debt including legal costs on a solicitor and own client basis and the Wholesaler's collection agency costs.
- 12.4 Without prejudice to any other remedies the Wholesaler may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Wholesaler may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Wholesaler will not be liable to the Customer for any loss or damage the Customer suffers because the Wholesaler exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 12.6 Without prejudice to the Wholesaler's other remedies at law the Wholesaler shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Wholesaler shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Wholesaler becomes overdue, or in the Wholesaler's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Security And Charge**
- 13.1 Despite anything to the contrary contained herein or any other rights which the Wholesaler may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Wholesaler or the Wholesaler's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Wholesaler (or the Wholesaler's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Wholesaler elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Wholesaler from and against all the Wholesaler's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Wholesaler or the Wholesaler's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Cancellation**
- 14.1 The Wholesaler may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Wholesaler shall repay to the Customer any sums paid in respect of the Price. The Wholesaler shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Wholesaler (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 For the sake of clarity, the cooling-off period mandated by the Distance Selling Regulations does not apply to online purchases made by business Customers.
- 15. Data Protection Act 1998**
- 15.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Wholesaler to:
- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - (b) to disclose information about the Customer, whether collected by the Wholesaler from the Customer directly or obtained by the Wholesaler from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Customer on publicly accessible credit reporting databases.
- 15.2 The Wholesaler may also use information about the Customer to monitor and analyse its business. In this connection the Customer authorises the Wholesaler to disclose personal information to agents or third parties engaged by the Wholesaler.
- 15.3 The Customer consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 15.4 Where the Customer is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 15.5 The Customer shall have the right to request the Wholesaler for a copy of the information about the Customer retained by the Wholesaler and the right to request the Wholesaler to correct any incorrect information about the Customer held by the Wholesaler.
- 16. Limitation of Liability**
- 16.1 The Wholesaler shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by the Wholesaler of these terms and conditions.
- 16.2 In the event of any breach of this contract by the Wholesaler the remedies of the Customer shall be limited to damages and the Wholesaler's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.
- 16.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict the Wholesaler's liability to any person for death or personal injury to that person resulting from the Wholesaler's negligence.
- 16.4 The Wholesaler shall accept no liability whatsoever for any loss (including loss of profit or goodwill) arising from the Customer's use of this Website or from the Customer's inability to use (or the results of use) of this Website including but not limited to loss or damage due to viruses that may infect the Customer's computer equipment, software, data or other property on account of the Customer's access to, use of, or browsing this Website or downloading of any material from this Website or any Websites linked to this Website.
- 16.5 If the Customer's use of material on this Website results in the need for servicing, repair or correction of equipment, software or data, the Customer assumes all costs thereof.
- 16.6 The Customer agrees to indemnify the Wholesaler fully, defend and hold the Wholesaler, and its officers, directors, employees and agents, harmless from and against all claims, liability, damages, losses, costs (including reasonable legal fees) arising out of any breach of the terms and conditions by the Customer, or the Customer's use of this Website, or the use by any other person the Customer's details.
- 16.7 The Wholesaler reserves the right to suspend Customer/s' access to the Website and ordering pages for any reason at any time.
- 17. Customer's Disclaimer**
- 17.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Wholesaler and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 18. General**
- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 Only the parties to these terms and conditions may seek to enforce them under the Contracts (Rights of Third Parties) Act 1999.
- 18.3 The Customer's purchase will be deemed to have occurred within the United Kingdom. These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of Bromley, Kent.
- 18.4 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Wholesaler.
- 18.5 The Wholesaler reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Wholesaler notifies the Customer of such change. Except where the Wholesaler supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
- 18.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.