

## Terms & Conditions

**The terms and conditions set forth herein supersede any prior catalogues or listings. EARL MULTIBAIES reserves the right to refuse service to any entity or person for any or no reason.**

**"Conditions"** means the standard terms and conditions of sale set out in this document and (as amended from time to time) include any special terms and conditions agreed in writing between the Company and the Customer.

**"Contract"** means the Contract for the purchase by the Customer and sale by the Company of the Goods.

**"Customer"** means the person who accepts a quotation from the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

**"Goods"** means the goods that the Company is to supply in accordance with these conditions.

**"Company"** means EARL MULTIBAIES, L ECOTIERE, 49125 CHEFFES, FRANCE.

**"Plants/plant material"** means the plants/plant material/cultures that the Company is to supply as Goods in accordance with these conditions where applicable.

**PRICES:** EARL MULTIBAIES (The Company) is a wholesale plant nursery. Our website, catalog, availability list and order form are intended only for those engaged in the business of buying and selling nursery products. Our prices are subject to availability and can change without notice. Any listing supersedes any past quotations or price lists. Any order is subject to cancellation if the materials ordered are lost or damaged due to flood, drought, fire, frost, hail, contamination, errors in the inventory or count or any other cause or act of God beyond our control. Any discount appearing on an invoice or acknowledgement is discretionary and shall never be deemed as constituting a continuing discount. All prices are in EURO and are EXW CHEFFES\_FRANCE. Shipping charges or boxing costs, where incurred, are invoiced at your cost. Customer assumes all shipping expenses.

**PAYMENT AND CREDIT POLICY:** The company reserves the right to ask a deposit with order for any order valued in excess of €1 000,00. A deposit of 10% of the value of the plants ordered is due and payable as a confirmation of order. The balance is due 14 days before the agreed delivery date. For long-time customers, once plant materials have been shipped or delivered, the balance owing for them is due within thirty (30) days from invoice date unless otherwise indicated on the invoice. Past due balances incur a 1.5% per month finance charge. Accounts that become past due may be placed in "Cash On Delivery" status. Payments received on any account will be allocated at our discretion. Any payment received from a customer with a past due balance will be allocated first to finance charges (if applicable), then to service charges (if applicable), then to the oldest balances. The Company reserves the right to take payment in full as cleared funds prior to delivery/collection for plants and delivery charges with any first-time or any other foreign customers. Deposits are non-refundable or at the Company's discretion if delivery declined.

**LIMITED WARRANTY AND TECHNICAL ADVICE:** Our plants are periodically inspected by the FDGDON (Fédération Départementale des Groupements de Défense contre les Organismes Nuisibles) and the French sanitary agency SRAL (Service régional de l'alimentation) – When proceeding to an export outside of the EU, a phytosanitary certificate will be established by SRAL in order to confirm that the exported plants are complying the sanitary rules of the country of importation. In such cases, an import permit might have to be provided by customer along with a French or English translation.

When plants are delivered into the EU Territory, plants will travel with a European plant passport.

EARL Multibaies warrants its plant material to be true-to-name and in good living condition at the time of shipment to you. However, EARL Multibaies makes no representations or warranties, expressed or implied, with respect to the vigor, pest or disease resistance, climatic adaptability, yield or quality of fruit or flowers, merchantability and fitness for a particular purpose, or any other characteristic of any variety that we produce. The foregoing list is intended to act as an example and in no way acts as a complete list of limitations. It is mutually agreed and understood that should any claim arise regarding plant materials that our total liability will be limited to replacement of the material in question, free of charge, or a refund of the purchase price on said item(s). This limitation also applies to any plant material that proves not to be true to name. Any claims arising from unsatisfactory quality of stock must be reported within the timeframes specified below in point "DELIVERY". Beyond those specified timeframes materials shall be deemed to be accepted in good condition. EARL Multibaies will not consider any claims that arise after delivered materials have been processed, stored improperly, transplanted, or otherwise altered. It is expressly understood that any technical advice furnished by EARL Multibaies with reference to the use of its products is given gratis and as a courtesy and the EARL Multibaies assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Customer's risk.

**TAXES, ASSESSMENTS, ROYALTIES, OR BREEDER'S FEES:** All applicable royalties, breeder's fees, taxes (including but not limited to, sales taxes, or any other special tax assessments) shall be fully paid by the Customer and will be added to the Invoice total and collected by EARL Multibaies

**ORDER ACKNOWLEDGMENT:** EARL Multibaies acknowledges and ships orders strictly on a first-come first serve basis, unless parties mutually agree to some other order of delivery. For this reason, we strongly encourage our customers to order as far in advance as possible in order to ensure availability as well as timely delivery of the needed varieties. Any order placed by the Customer shall be deemed a firm Contract of sale when the Company issues

a Confirmation of Sale. Unless others mutually agreed and specified in written on Proforma, confirmation (acknowledgement) of order, is valid after a 10% deposit. EARL Multibaies will then attempt to confirm orders within three (3) business days of payment receipt. If the Customer doesn't receive such confirmation of order within 3 business days, it is the responsibility of Customer to make sure with Earl Multibaies that some miscommunication hasn't happened and that an order has been placed in due form. Any cancellation of confirmed orders will be subject to written approval from EARL Multibaies. In certain cases, any deposits paid will be retained in lieu of other damages. In case of default, or late cancellation of an order, EARL Multibaies reserves the right to cancel any remaining orders for said Customer. Any checks returned for lack of funds will be subject to a €35.00 service charge. All orders will be by written Acknowledgement or Invoice. The terms and conditions set forth on these documents shall control all transactions.

**DELIVERY:** Delivery of the Goods shall take place when the Customer collects the Goods from the Company's premises or if the Company agrees some other place or method of delivery with the Customer by the Company delivering the Goods to that place.

Any dates quoted for collection or deliveries of Goods are approximate only and the Company shall not be liable for the consequences of any delay in the delivery of the Goods howsoever caused. Time of delivery shall not be of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer. If the Customer fails to take delivery of the Goods in whole or part, or fails to give the Company adequate delivery instructions at the time stated for delivery or within 18 month after the order has been placed, otherwise than by reason of any cause beyond the Customer's reasonable control or reason of the Company's fault, then without prejudice to any other right or remedy available to the Company, the Company may:

Store the Goods until actual delivery and charge the Customer for the reasonable costs including insurance and storage; or

Sell the Goods at the best price readily obtainable and after deducting all reasonable storage and selling expenses account to the Customer for the excess over the price under the Contract or charge the Customer for any short-fall below the price under the Contract.

Charge the Customer in full for the Goods and all costs incurred if no alternative sale of the Goods can be achieved.

Where the Goods are supplied for export from FRANCE, Goods are sold as EXW ("Ex works" : Incoterms ICC2000, Publication 560). EXW means that the Company's obligations are fulfilled when the goods are available at their premises, or at another named place. The Customer is liable for the haulage and insurance and must arrange and pay for the goods to clear customs. All import documents are the responsibility of the Customer. Where applicable, phytosanitary certificates or plant health passports will be provided.

When agreed between the parties, EARL Multibaies may offer other alternatives and sell the goods as CPT ("Carriage Paid To": Incoterms ICC2000, Publication 560). In such case, costs of transport and packaging arranged and agreed between the Company and the Customer will be charged and invoiced by EARL Multibaies where possible with the Goods. Company reserves the right to increase the quoted haulage price should any surcharges from the transporters subsequently be applied. The same is true for any changes in monetary exchange rates.

The Company may split delivery of Goods ordered. In such cases the Company shall be entitled to treat part delivery as a separate Contract and invoice separately.

Upon receiving the sealed load, it is the responsibility of the customer to verify the correct number of pallets and the integrity of the shipment. In case of any doubt, this must be noted on the shipping form of the transporter (CMR Document). No reimbursement by shipping company insurance can be guaranteed without the participation of Customer in this step.

If Customer is of the opinion that there is a shortfall in the agreed quantity at the time of delivery, or adjudged by the Customer not to meet specification, then the Company must be advised within 72 hours and with every consignment. Goods claimed to be defective must be held in good and re-usable condition

In case of true to name issues regarding varieties, Customer has a maximum of 3 year for reporting proofs of such problems.

Any delay in advising or disposal of plants negates any right to claim against the Company.

Any orders placed by Customers outside of France are liable to payment in full as cleared funds in the Company's bank account before delivery/collection.

**FORCE MAJEURE:** Should the fulfilment of any contract or order be prevented or delayed by Act of God, action by any Government, blockade, revolution, prohibition of export or import, riot, war, civil commotion, strikes, lockouts, force majeure, failure of crops, breakdown of machinery, power failure, fuel shortage, loss and/or detention at sea/air or any other contingency beyond the Company's control, the Company will not be responsible for any loss and/or damage occasioned thereby. Should any of the Goods be rendered unfit for delivery by reason of any of the above acts the Contract so far as it relates to those Goods shall be deemed to be cancelled.

**WAIVER:** whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**PLACE OF JURISDICTION:** In case of dispute, the court of Chamber of commerce based in Angers will have authority