CODE OF GOOD TRADING PRACTICE

FOR PLANTS AND FLOWERS

October 2013

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British Protected Ornamentals Association

West Sussex Growers' Association

VISION

Our vision is of a thriving, productive and profitable British ornamentals sector that is able to supply a range of high quality plants and flowers to meet the demands of consumers – today and in the future.

AIM

British growers want to achieve the highest levels of efficiency and develop innovative new products and production techniques to increase the availability of home grown plants and flowers to consumers. However, ornamental horticulture production is often described as a high risk, low reward industry. Growers today are operating against a backdrop of diminishing profitability, escalating costs and increasing uncertainty in the face of extreme weather conditions.

In launching the Code of Good Trading Practice we aim to establish a framework around which suppliers and their customers can build profitable, mutually advantageous working relationships that meet market requirements and customer needs and demands.

Whilst compliance with this Code is voluntary, it aims to provide a means for all parties in the ornamentals supply chain to take responsibility and be accountable for the conduct of their trading relationships. Its overriding aim is to establish agreed standards of fair and acceptable behaviour and thereby promote sustainable trading relationships.

The Code aims to formalise the trading relationship between suppliers and customers, with less reliance on oral (commonly referred to as 'gentlemen's') agreements. This will result in greater transparency with fewer misunderstandings between customers and suppliers.

Companies adopting this Code should endeavour to do so in full, so that they can demonstrate their willingness to adopt good practice in their dealings with suppliers.

THE SECTOR

The beautiful array of plants and flowers produced by British growers adorn our homes, gardens and public spaces providing a more attractive and healthier landscape and environment for recreation, leisure and tourism. The British ornamentals sector includes the production of bedding and pot-plants, nursery stock, cut-flowers and bulbs. The sector is worth over £1 billion at the farmgate, and has an estimated retail value of over £1.6 billion per year. Eight out of 10 Britons have a garden or somewhere to grow outdoor plants. In 2012, nearly 26 million British people bought garden plants. Rain rather than recession has the greatest effect on their spending.

RATIONALE AND MARKET CONTEXT

Trading has been extremely challenging for the ornamental sector in recent years, with some of the toughest and most extreme weather conditions in living memory causing havoc with growing schedules, marketing and consumer demand.

The overall garden retail market was down 14% in 2012 compared to 2011. Garden centre sales in April 2012 – usually a crucial month for the ornamental sector – were down a massive 40% on the previous year due to record rainfall[1]. This was a setback that the sector never recovered from. Unfortunately the 2013 ornamental season got off to an equally depressing start, with low temperatures and wet weather dampening spring sales and forcing growers to dump stock.

The market volatility created by such atypical seasons has exposed the level of risk that growers of ornamental produce are exposed to. Certain buying practices appear to place unfair burdens on growers, which can result in increased costs, low profitability and a lack of reinvestment. A prime example, and one that has become all too common in recent seasons, is the cancellation of orders, or reduction in their size by the customer at any point during the production process. This leaves the grower with excess stock for which costs cannot be fully recovered.

With extreme weather events predicted to become a more characteristic feature of the British climate, parties at both ends of the supply chain are likely to face an increased level of risk. This has the potential to create instability and uncertainty in trading relationships, which will, at best, hinder all parties' ability to plan and budget with any accuracy and, at worst, leave businesses reeling from the aftershocks of market volatility and create tensions in the supply chain. Such practices are not conducive to a healthy and profitable supply chain. Nor do they serve the best long term interests of consumers.

The situation in the ornamental sector is complicated further by the nature of the product being traded. Plants and plant material have a limited shelf life, and are at peak quality for a specific and limited time window. Live materials can deteriorate rapidly and the speed of deterioration is increased when the material is stored or displayed in sub-optimal conditions. While growers are experts in manipulating plant growth, the degree of flexibility growers and retailers have in any plant's 'life window' will always be limited before a loss of quality occurs. Even if the process is halted before a saleable product is produced, irrecoverable costs would have been incurred in allocating and setting up production facilities.

If we are to achieve our Vision for the British ornamental sector then a more inclusive, responsible approach to supply chain relationships is required. A new approach must cover the entire supply chain and encompass all sectors of the ornamentals industry.

1 HTA Garden Retail Market Analysis 2013

GOVERNANCE AND COMPLIANCE

The Code promotes responsible and transparent trading relationships. It sets out clear standards of fair and acceptable buying behaviour, which participating companies will incorporate into their statements of trading policy and trading agreements (or contracts). Companies should proactively communicate these policy statements, both internally to their trading teams and externally to their suppliers and/or customers.

The Code will be subjected to an annual review process to assess its effectiveness and compliance.

The intention is that it will in due course encompass all sectors including:

- DIY stores and home improvement retailers
- Garden centre groups and retail nurseries
- Wholesale distributors
- Local authorities and landscapers
- Horticultural suppliers
- Retail stores and groups

THE CODE OF GOOD TRADING PRACTICE

1. CONTRACTS

Any agreement with a supplier of ornamental produce is to be in writing.

2. CONTRACT DURATION

a. Contracts may be for fixed periods or may be rolling contracts (often referred to as 'evergreen' contracts).

b. Customers are encouraged to offer long term contracts to suppliers that offer greater certainty and stability for both parties.

3. PRICING AND PRICE VARIATION

a. The definition of price is the net price the supplier receives (net of all rebates and discounts).

b. Contracts between suppliers and customers must set out either a clear price, a clear pricing mechanism or price notification process (the process by which the customer notifies the supplier of the price and any changes), such that at any given point in time, a supplier can be certain of the price that will be paid for the product supplied.

c. Prices are negotiated either for a season or a specified volume of product, with no unilateral changes imposed by the customer. In a rolling contract the existing price is the agreed price until otherwise agreed in writing.

d. No price changes, or the equivalent of, can be made once crops have been put into production unless agreed in writing by both parties.

4. TERMINATION AND NOTICE TO TERMINATE

a. Notwithstanding that termination of contracts by either party must take into account the growing cycle of the product, the contract should specify the notice period under which either party may terminate the contract and should specify how notice is to be served by either party.

b. TERMINATION ON PRICE VARIATION

i. In all circumstances and subject to paragraphs 3 and 6, the contract must provide that suppliers will be given at least 30 days written notice of any downward change to the price, (or pricing mechanism or price notification process) and, for the avoidance of doubt, the contract should not permit any changes to the price, pricing mechanism or price notification process to be made retrospectively.

ii. The supplier has the right to terminate their contract with the customer without penalty on a maximum of 3 months' written notice following notification to the supplier of any change made by the customer to the price, pricing mechanism or price notification process. Notice by the supplier must be submitted to the customer within 30 days of receipt of the written notification of any change to the price, pricing mechanism, or price notification process.

c. TERMINATION ON INSOLVENCY

i. The contract should allow either party to terminate the contract with immediate effect in the event that either party is issued with a winding up or administration order, or where either party goes into administration, receivership, liquidation or bankruptcy.

d. TERMINATION ON FUNDAMENTAL BREACH

i. The contract must allow either party to terminate with immediate effect if the other party fundamentally breaches the terms of the contract. The contract may specify what would constitute fundamental breach by either party.

5. VARIATION OF CONTRACT TERMS

a. The contract should set out the process by which variations to the terms of the contract can be made. Unless the contract says otherwise, any change to any term of the contract, which is not specifically agreed with the supplier cannot be made unless 30 days written notice has been given to the supplier of the proposed change.

b. The contract should also allow the supplier to terminate on a notice period of not more than 3 months* if any changes to any of the terms of the contract are made which have significant commercial implications for the supplier and which have not been specifically agreed with the supplier.

*Suppliers may agree a longer notice period, beyond the 3 month notice period, provided that such longer notice period is agreed through a process of negotiation.

6. PROGRAMME COMMITMENT, RESERVES AND ORDERING

a. Customers will place a reserve (the total production figure required from a grower for a particular date or season) in advance of an order being placed (ideally one year).

b. Post production, no increases or decreases in reserves can be accepted unless agreed in writing by both parties.

c. One hundred per cent of a reserve placed is taken by the customer at the price agreed between the two parties, regardless of whether the order is still required.

d. An order that draws down on the agreed reserve must be placed in the form of an auditable contract agreed and signed by both parties. If the time between the order and delivery is too short to practically allow for a contract to be signed, then the order and any programme related document issued by the customer forms the contract for the specified volume.

e. Once an order is placed and accepted it cannot be cancelled or amended unless such cancellation or amendment is agreed in writing by both parties.

f. The customer cannot unilaterally impose changes to reserves and orders under threat of terminated supply for the grower.

7. PENALTIES

a. Financial penalties for non-compliance must be set out in the contract from the outset. Penalties can only be imposed by a customer when the supplier has consistently not complied with the terms of the agreement, and following reasonable prior warning of non-compliance being given allowing a reasonable period for the supplier to rectify the non-compliance. The only exception to this principle is in non-compliance cases involving safety or legality issues, where instant penalties or termination of the agreement can be imposed.

b. Penalties relating to the loss of specific quantities of product should reflect the customer purchase value of the product, not the retail value.

8. PAYMENT

a. The customer should settle any supplier invoices within 30 days (unless other arrangements for payment are mutually agreed).

c. All supplementary payments must be agreed by both parties and included as part of the price negotiations, not added subsequently.

d. Unauthorised debits should never be deducted from a supplier's account.

e. It is accepted that payment by scan is unsuitable for this supply chain due to the perishability of the final product.

9. SUPPLY / DEMAND PLANNING

Bilateral forward planning is essential to ensure final orders are met and taken in accordance with agreed quantities and timings. A joined up business plan across the supply chain ensures that retail customers, intermediaries and suppliers are working together towards common goals for the category.

10. PROMOTIONS

Promotional activity will be planned and agreed in advance between suppliers and customers. A flexible, production led approach to the timing of promotions will be adopted as much as possible to help manage supply and demand.

11. PRODUCT SPECIFICATION

a. Tendering must be based on a specification agreed by the customer and supplier, and the product must be produced in line with the agreed specification.

b. Customers should seek to reduce wastage, eliminate costs and add more value to the supply chain by utilising as much of the available product as possible and adopting realistic product specifications.

c. Customers will ensure that products supplied are well cared for and appropriately tended to at point of sale to maintain product quality and condition.

12. VOLUME / EXCLUSIVITY

The contract must allow the supplier to supply product to other customers where desired.

13. SUPPLIER INVESTMENT

Suppliers may have invested money in, or on behalf of their customer. The contract should clearly specify whether or not the investment is to be returned to the supplier if the supplier ceases to supply the customer, and if it is to be returned, over what timescale and whether any interest is payable on the investment.

14. COMPLIANCE WITH RELEVANT LEGISLATION

As a minimum all contracts should be compliant with all applicable and relevant legislation implemented in the UK.

15. OTHER TERMS TO BE SPECIFIED IN THE CONTRACT

a. Parties to the contract: the legal identity of the parties to the contract and their addresses for service.

b. Customer obligations: compliance by the supplier with customer requirements in respect of any applicable schemes or assurance standards.

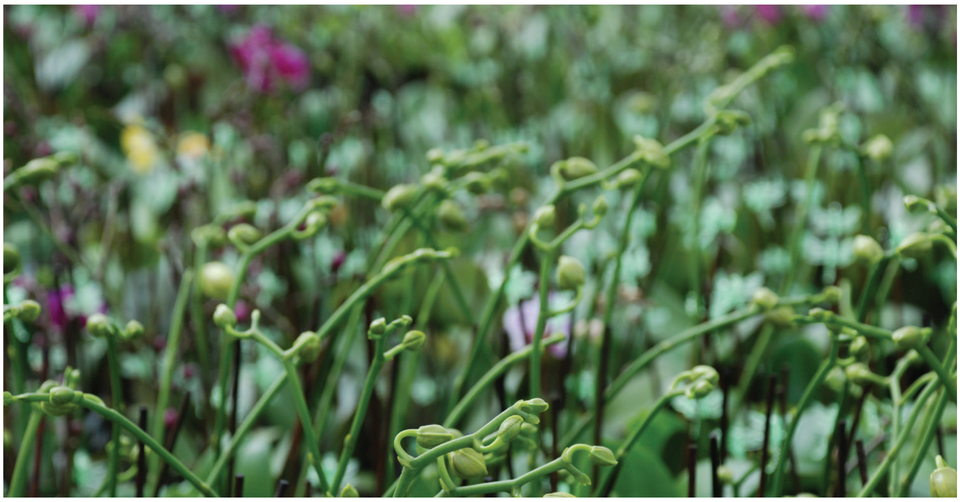
c. Force majeure: the contract should specify what events constitute events of force majeure, and how such events will be dealt with.

d. Property and risk: point of transfer of ownership of the product and risk in the product.

e. Assignment (assignation): the circumstances under which the contract can and cannot be assigned by either party must be specified, but in any event neither party should be entitled to assign their rights and obligations under the contract without the other party's written consent.

f. Provision of insurance: any obligations on either party to insure should be specified.

g. Confidentiality: whether any confidentiality obligations apply.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