

National Garden Gift Voucher Scheme

Gift Card and eVoucher Scheme Rules

These rules ("**Rules**") govern the National Garden Gift Vouchers Gift Card programme and the products therein; being Gift Cards ("**Gift Cards**") and eVoucher's ("**eVouchers**") issued by the Horticultural Trades Association under the National Garden Gift Voucher Scheme ("**Scheme**").

These Rules contain the terms and conditions to be observed by all members of the Scheme ("**Members**").

1 The Scheme

- 1.1 The proprietor of the Scheme is the Horticultural Trades Association (the "**HTA**"), company number 00169606, whose registered office is at Horticulture House, Manor Court, Chilton, Didcot, Oxfordshire, OX11 0RN.
- 1.2 The objective of the Scheme is to contribute to the profitability of the members of the HTA through driving footfall into their garden retail centres and promoting gardening and UK gardening good causes to the public.
- 1.3 The Scheme shall achieve this objective by facilitating the selling of Gift Cards and eVouchers to customers of the Member ("**Customers**") and redemption of Gift Cards and eVouchers, from Customers which may be used to purchase goods or services sold by the Member at its garden retail centre(s) from time to time.
- 1.4 The HTA may also make the Scheme available to such other organisations as may from time to time be approved by the HTA board of directors ("**Board**"), in addition to Members. In this case, those other organisations shall adhere to these Rules as if they were Members and to any other directions relating to their participation in the Scheme as the Board shall issue from time to time.
- 1.5 The geographical coverage of the Scheme is the United Kingdom, the Isle of Man and the Channel Islands. The geographical coverage of the Scheme may be amended by approval of the Board.
- 1.6 Management of the Scheme shall be vested in the Board. The Board may delegate this management to a committee, or committees, whose Members must be Members of the HTA.
- 1.7 Any information about the Scheme contained in any promotional or other material issued by the HTA shall not be incorporated in, or take precedence over, these Rules.

2 Membership

- 2.1 Members of the HTA engaged in retailing are eligible to participate in the Scheme. If HTA membership ceases for any reason, participation in the Scheme shall be automatically terminated.
- 2.2 Participation in the Scheme signifies acceptance of such HTA rules and administrative arrangements as may from time to time be applicable to the Scheme, as communicated or published by the HTA to Members from time to time.
- 2.3 It is a requirement that Members accept the redemption of ALL Scheme eVouchers and Gift Cards if signed up to accept them, when they are presented by customers, and continue to

redeem other National Garden Gift Voucher products in accordance with the Rules applicable to those products.

- 2.4 Members are expected to show commitment to the Scheme and actively promote the Scheme within their retail outlets and/or on their website.
- 2.5 Members accept their responsibility for operating a fair change policy for exchange of goods and services purchased using eVouchers and Gift Cards, accepting eVouchers and Gift Cards as payment for goods and services and redeeming eVouchers and Gift Cards in accordance with these Rules.
- 2.6 Participation in the Scheme on the terms available for Members requires paid up membership of the HTA and the HTA reserve the right to restrict any Member's access to the Scheme, including by preventing a Member from being able to sell Gift Cards or redeem eVouchers and Gift Cards, in the event that Member has outstanding debt to the HTA (whether a Membership debt or otherwise).
- 2.7 Membership of the Scheme may be withdrawn at the discretion of the Board. The Board's decision shall be final.
- 2.8 Where there is a change of ownership or control of a Member, the following procedure will be followed:
 - (a) the Member must inform the HTA in a timely manner that the change of ownership or control is taking place; and
 - (b) any decisions regarding the ordering or redemption of payments will be at the sole discretion of the Board and will take into account any changes of business activity from retailing and new HTA membership applications deemed necessary.

3 Provision of Equipment

- 3.1 In order to accept eVouchers and Gift Cards, Members must use either:
 - (a) terminal and scanner sets approved by the HTA ("**Equipment**"); or
 - (b) an integrated EPOS connection approved by the HTA.
- 3.2 Where Equipment is required by the Member, the HTA (or a third party designated by the HTA) will be responsible for the supply and installation of Equipment at Member premises. Members must follow instructions issued by the HTA in relation to Equipment, including regarding the order, installation, maintenance and return of Equipment.
- 3.3 Where Equipment is supplied under clause 3.2:
 - (a) The HTA (or a third party designated by the HTA) will make available a support helpline to the Member in relation to the Equipment. The HTA will notify the Member of the details to contact the support helpline and may from time to time update these details;
 - (b) Members shall:
 - (i) use the Equipment in accordance with any operational instructions and guidance provided to them by, or on behalf of, the HTA to the Member from time to time;

- (ii) Members will be responsible for the Equipment once the Equipment has been installed at their premises;
- (iii) Members shall provide prominent and sufficient space at their premises for the Equipment and shall provide the HTA with reasonable access and assistance to install and maintain such Equipment. The Equipment shall be positioned only at a place agreed between the HTA and the Member;
- (iv) not part with possession of any of the Equipment or sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (v) take proper care of the Equipment and keep it in good condition;
- (vi) take all reasonable steps to prevent any damage to or deterioration of the Equipment;
- (vii) keep the Equipment free from any charge, lien or other encumbrance or third party right or interest;
- (viii) not add to or combine the Equipment (or any part or parts thereof) with anything else, including without limitation any computer hardware or software, or do any act or thing which may result in the Equipment or any part of it becoming a fixture;
- (ix) not move the Equipment from its place of installation, or alter or tamper with the Equipment in any manner, or remove from the Equipment any plate or label affixed thereto by or on behalf of the HTA;
- (x) refrain (and ensure that its employees, agents and representatives, and persons visiting the premises refrain) from any act or omission which damages or impairs, or may damage or impair, the Equipment (or any part or parts thereof);
- (xi) in the event that the Member becomes aware of any fault or defect in the Equipment (or any part or parts thereof), forthwith notify the HTA (or a third party designated by HTA);
- (xii) ensure that only properly trained employees operate the Equipment;
- (xiii) not use the Equipment (or any part or parts thereof) for any purpose other than activating and redeeming Gift Cards and any other National Garden Gift Voucher products HTA notifies the Member that it may use Equipment to accept from time to time, subject to the rules applicable to such other National Garden Gift Voucher products;
- (xiv) take such steps (including compliance with all safety and usage instructions provided by the HTA or any manufacturer of the Equipment) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

- (xv) permit the HTA or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Member's premises, and shall grant reasonable access and facilities for such inspection;
- (xvi) not use the Equipment for any unlawful purpose;
- (xvii) supply, at their premises and at their own expense, suitable power point(s) and telephone connection point(s) (if required) located close to the Equipment; and
- (xviii) be responsible for line rental in respect of the telephone line for any Equipment.

3.4 Members acknowledge that:

- (a) the Equipment and all parts thereof will remain the property of the HTA (or its lessors) at all times and agrees that it shall be in possession of the Equipment, goods or other materials in a fiduciary capacity; and
- (b) the HTA shall be entitled to recover possession of the Equipment if the HTA's agreement to rent the Equipment from a third party terminates for any reason, or if the Scheme terminates, or if the Member's participation in the Scheme terminates for any reason (including pursuant to clause 11 of these Rules). In such event Members shall deliver up the Equipment at such address as the HTA shall require, or if necessary allow the HTA or its representatives access to the any premises where the Equipment is located for the purpose of removing the Equipment;

4 Provision of Materials

4.1 The HTA may from time to time make available:

- (a) details of Members participating in the Scheme; and
- (b) promotional materials for the Scheme.
- (c) at it's own cost the production and supply of Gift Cards, wallets and stationery required to achieve successful sales to customers

4.2 Materials to be used in the Scheme are restricted to those supplied by the HTA or materials otherwise authorised in writing by the HTA.

4.3 Once delivered, the storage, management and utilisation of all Materials is the responsibility of the Member.

4.4 All Materials are to be utilised in accordance with Clause 2.4.

4.5 The Member grants the HTA, its agents and employees an irrevocable license to enter any Scheme participating premise, giving reasonable notice, not to be unreasonably withheld, in order to inspect the operation of the Scheme in accordance with Clause 2.

5 Sale of Gift Cards

5.1 Gift Cards sold by HTA Members to customers are at face value.

5.2 Where Gift Cards are sold to customers, Members will be charged a sales commission by the HTA, the value of which is decided upon by the Board from time to time.

6 Redemption of Gift Cards and eVouchers

- 6.1 When a Customer seeks to redeem all or part of the funds on an Gift Card or eVoucher to access products or services from a Member, the Member shall submit a "**Redemption Request**", being an electronic transmission to check whether the Customer may redeem the Gift Card or eVoucher in the amount indicated in the Redemption Request.
- 6.2 Following receipt of a Redemption Request, the HTA (or a third party acting on HTA's behalf) will check the balance on a Gift Card or eVoucher, and if the balance is sufficient, will promptly send the Member an electronic transmission to confirm that the Customer may redeem (or partially redeem) the Gift Card or eVoucher (a "**Redemption Confirmation**"). Alternatively, if the balance is not sufficient, the HTA (or a third party acting on HTA's behalf) will promptly send the Member an electronic transmission to confirm that the redemption is denied.
- 6.3 If a Redemption Confirmation is sent, the Member shall then enable the Customer to redeem (or partially redeem) the Gift Card or eVoucher (as applicable), and shall send an electronic transmission to the HTA (or a third party acting on HTA's behalf) to confirm that the Gift Card or eVoucher has been redeemed (in whole or part), and the HTA will update its records to reflect the redemption (or partial redemption) ("**Actual Redemption**").
- 6.4 The HTA will notify the Member of the amount of Actual Redemptions on the Statement issued under clause 8.2 of these Rules covering the period of time to which that Statement relates.

7 Settlement

- 7.1 Following Actual Redemption, the HTA will pay the aggregate amount of a Member's Actual Redemptions to the Member (less recoupment of the HTA's fees or any other amounts due to HTA in accordance with clause 8.3) at the frequency and on the timescales the HTA notifies to the Member from time to time, such settlement to be to the Member's bank account agreed between the Member and the HTA from time to time.
- 7.2 Settlement will take place in accordance with clause 7.1 provided that:
- (a) the Member's confirmation of Actual Redemption in accordance with clause 6.3 is received by the HTA (or a third party acting on the HTA's behalf) within any timescales stipulated by the HTA from time to time; and
 - (b) the Member has otherwise fulfilled its obligations pursuant to these Rules.

8 Scheme Fees and Payment

- 8.1 Members participating in the Scheme will be charged fees (and, if required by the HTA, certain costs and charges) in the amounts fixed by the HTA, and communicated or published to Members, from time to time.
- 8.2 HTA will issue the Member a periodic statement showing Actual Sales and Redemptions and all amounts due in relation to the Scheme, in each case covering the period of time specified on the statement ("**Statement**").
- 8.3 The HTA will deduct amounts due to it (whether arising under these Rules or otherwise) from the amount of Actual Redemptions it pays to the Member.
- 8.4 If the amounts the Member owes to HTA exceeds the amount of Actual Redemptions, the HTA will issue an invoice in respect of such shortfall which the Member must pay on demand.

8.5 The HTA reserves the right to charge interest on late payment of invoices at the rate of 3% per annum above the Bank of England base rate from time to time in force and/or decline to redeem further Gift Cards until all overdue amounts are paid in full.

8.6 All fees and other amounts payable by Members under these Rules are exclusive of VAT and any other applicable taxes that may apply. Members will pay such tax upon receipt of the relevant valid tax invoice. If a Member is required by applicable law to make a deduction or withholding from any payment due under these Rules, it will pay such additional amounts as are required to ensure that the net amount received and retained by the HTA equals the full amount that would have been received and retained by the HTA had no such deduction or withholding been made and/or no such liability to tax been incurred.

9 Information Security

9.1 Members must:

- (a) have in place appropriate technical and organisational measures which ensure an appropriate level of security for the processing of Gift Cards and eVouchers, and any transaction data relating to those Gift Cards and eVouchers, against accidental or unlawful destruction, alteration, accidental loss, or unauthorised disclosure, access or processing; and
- (b) keep all transaction data, and Gift Card and eVoucher data, safe and in a secure way that prevents unauthorised access, loss, theft or disclosure to any unauthorised person.

10 Trade Mark Licence

10.1 The HTA hereby grants each Member a royalty-free, non-exclusive, non-sublicensable, licence during term of their membership of the Scheme, to use, including display, publish, exhibit, and reproduce the HTA's logo(s) and trademark(s) (as provided by the HTA to Members from time to time) for the purposes of promoting Gift Cards and eVouchers. Except for the limited rights to use the HTA logo(s) and trademark(s) as specified herein, no other rights of any kind are granted.

10.2 Members acknowledge that all intellectual property rights in the HTA's logo(s) and trademark(s) are owned solely by the HTA and that Members shall not acquire any rights or interest, including without limitation any trade mark, design or copyright rights in the HTA logo(s) or trademark(s) or in any variations thereof. All goodwill derived from the HTA logo(s) or trademarks shall inure exclusively to the benefit of the HTA, and any such goodwill is hereby assigned to the HTA.

10.3 Use of the HTA's logo(s) and trademark(s) by Members shall be solely in accordance with any instructions provided by the HTA from time to time.

10.4 Members shall not do, or omit to do, or procure or assist to be done, any act that damages or could reasonably be expected to damage the good name, reputation or image of the HTA, or may invalidate or jeopardise any registration of the HTA's logo(s) or trademark(s).

10.5 The permission granted under this clause 10 may be revoked or terminated by the HTA at any time.

11 Termination of Participation in the Scheme

11.1 A Member may terminate its participation in the Scheme by giving not less than 3 months' written notice to the HTA at any time.

- 11.2 The HTA may, at the discretion of the Board, terminate a Member's participation in the Scheme by giving not less than 3 months' written notice to the Member at any time.
- 11.3 The HTA may terminate a Member's participation in the Scheme with immediate effect by giving written notice to the Member if:
- (a) the Member is in breach of any of these Rules (in particular but without limitation the obligation to pay the annual HTA membership subscription fees on the due date) and such breach is either incapable of being remedied or is not remedied within 7 days of the HTA sending written notice of such breach to the Member;
 - (b) the Member's membership of the HTA terminates for any reason whatsoever; or
 - (c) the Member goes into liquidation, makes a voluntary agreement with its creditors, becomes subject to an administration order, ceases or threatens to cease to carry on business or goes into receivership.
- 11.4 Where notice of termination of the Member's participation in the Scheme is given under clauses 11.1 - 11.3 of these Rules, the Member shall follow the HTA's instructions regarding the arrangements for termination of the Member's participation in the Scheme and co-operate with the HTA regarding the same, including by continuing to accept Gift Cards and eVouchers in accordance with these Rules up until the date of termination.
- 11.5 The Member must notify the HTA immediately if it reasonably believes that the circumstances set out in clauses 11.3(a) or 11.3(c) of these Rules may apply to the Member.
- 11.6 Where a Member's participation in the Scheme is terminated, the procedure set out below will be followed and any exception to it is at the sole discretion of the Board:
- (a) the Member shall cease to sell Gift Cards and redeem Gift Cards and eVouchers from the date of such termination;
 - (b) the Member may not submit any Redemption Requests from the date of such termination;
 - (c) if Equipment has been supplied to the Member, all Equipment must be returned to the HTA (or a representative nominated by the HTA) by the date specified by the HTA; and
 - (d) the Member must promptly pay all sums due to the HTA.

12 Liability

- 12.1 The HTA will not be liable to a Member, in contract, tort or otherwise:
- (a) for any indirect, special or consequential loss or damages whether caused by breach of contract or tort (including negligence or breach of statutory duty) or arising in any other way; or
 - (b) for any event or series of connected events in excess of the amount of charges and fees due from or paid by the relevant Member in the 6 month period immediately preceding the event, or series of connected events, giving rise to the claim (the **Liability Cap**).
- 12.2 The Liability Cap will not apply to any liability of the HTA to settle the aggregate amount of a Member's Actual Redemptions properly due to a Member pursuant to clause 7 of these Rules.

- 12.3 If a Member wishes to bring a claim against the HTA in relation to this Scheme or these Rules, the relevant Member must provide to the HTA notice in writing and provide full details of its claim and alleged losses no later than 12 months after having become aware of the claim.
- 12.4 The Member acknowledges that it is responsible for the goods and services it provides to Customers in exchange for Gift Cards or eVouchers ("**Member Products**"). The Member will, to the extent that a claim does not arise from the negligence or wilful default of the HTA, indemnify and keep indemnified HTA from and against all losses suffered or incurred by it arising out of or in connection with the supply of Member Products to Customers.
- 12.5 Nothing in these Rules excludes or limits the HTA's liability for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other losses which cannot be excluded or limited by law.

13 Miscellaneous

- 13.1 The Board's decision on all matters relating to these Rules shall be final and binding on Members.
- 13.2 The HTA may subcontract any aspect of its business that is relevant to the Scheme or these Rules.
- 13.3 These Rules shall be governed by English law and Members agree to submit to arbitration or at the HTA's sole discretion, to the exclusive jurisdiction of the English Courts.
- 13.4 Members may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of their rights and obligations under these Rules.