

Terms and Conditions of Supply

1. Definitions

- 1.1. "the Supplier" means Wallum Nurseries Pty Ltd (ABN 92086722456)
- 1.2. "the Buyer" means the person or entity who is acquiring or purchasing goods and services from the Supplier.
- 1.3. "Promise Date" means the date the Supplier will plan for the Goods be available for delivery or collection and may be various dates if specified on the order. The Promise Date is indicated on the order documents.
- 1.4. "Goods" means such of the plants, goods and other services supplied by the Supplier to the Buyer.

2. Orders

- 2.1. All Orders are to be in writing specifying the required Goods and the Promise Date, and in a form approved by the Supplier.
- 2.2. Any quotations made by the Supplier are based on the quantities ordered by the Buyer and are subject to change if quantities change.
- 2.3. An Order will be created when the Supplier provides confirmation of their acceptance of the quotation. Confirmation can be verbal, email or provision of a Buyer PO.
- 2.4. A deposit may be required depending on the amount of the order.
- 2.5. These Terms and Conditions are the basis in respect of all offers to sell, quotations, contracts and other commercial transactions for the supply of Goods by the Supplier.
- 2.6. The Supplier's Order is the basis for the formation of a Contract. The Buyer has one (2) business day to advise any amendments.

3. Pricing

- 3.1. Subject to clause 2, prices for Goods are subject to change without notice and shall be those current at the time of the receipt of the order by the Supplier.
- 3.2. Prices are exclusive of GST and delivery charges.

4. Payment

- 4.1. Unless the Buyer has a credit account with the Supplier, orders will only be processed after receipt of payment in full.
- 4.2. Otherwise, payment shall be made within thirty (30) days from end of month by the Supplier.
- 4.3. Late payments may incur an administrative fee of \$50 for every attempt to collect payment, plus interest at the rate of 1% per month calculated on the daily balance.
- 4.4. Any expenses or costs incurred by the Supplier in recovering any outstanding amounts, including debt collection or legal fees, shall be paid by the Buyer.

5. Freight

- 5.1. All costs associated with the transport of the Goods, whether the transport is contemplated by these Terms and Conditions or not, are to be borne by the Buyer.
- 5.2. Damage to goods during transport is the responsibility of the Buyer.

6. The Goods

- 6.1. Subject to Clause 6.2, the Supplier does not warrant that the ordered Goods will be available on the Promise Date or conform to any specifications specified by the purchaser, or any other party, whatsoever.
- 6.2. Should any item ordered by a Buyer be unavailable on the Promise Date, the Supplier may, at the Supplier's discretion, substitute such item with another similar item at no additional cost to the Buyer.
- 6.3. Should the Supplier not supply the Goods by the Promise Date, or is unable to substitute an item as specified in Clause 6.2, and because of no fault of the Buyer, the Supplier shall refund to the Buyer any deposit monies paid and otherwise the Supplier shall not be liable to the Buyer for loss or damage (including consequential loss) in any circumstances.
- 6.4. Should the Buyer be unable to accept delivery of the Goods by the Promise Date, and a later Promise Date is agreed to by the Supplier, the Supplier will store the Goods (ensuring they are adequately nourished and maintained) until the Promise Date, a maintenance fee of 5% of the quoted price will be incurred by the Buyer for each month or partial month of storage.

7. Return of Goods

- 7.1. Any claim for Goods damaged or short supplied must be made in writing within two (2) days from the date the Goods were delivered and must refer to the original invoice number, date and reason for the claim.
- 7.2. Goods will not be accepted without prior approval in writing by the Supplier.
- 7.3. Other than as specified above, Goods cannot be returned by the Buyer.
- 7.4. Damage during freight is the responsibility of the Buyer.

8. Retention of Title

- 8.1. Notwithstanding physical delivery of the Goods to the Buyer, right, title and interest in all Goods remain with the Supplier until the Buyer has made full payment for Goods sold by the Supplier to the Buyer.

9. Risk

- 9.1. All Goods shall be at the risk of the Buyer from the date the Goods are dispatched for delivery to the Buyer and the Buyer shall be liable for and shall insure fully against such risk.

10. Cancellation or Changes to Orders

- 10.1. Following formation of a Contract any cancellation of, or changes to the contract is the sole discretion of the Supplier.
- 10.2. Any changes to orders shall be provided in writing by the Supplier.
- 10.3. The Supplier has the sole discretionary right to recover all cost up to 100% of the order upon cancellation.
- 10.4. A cancellation fee may be charged at the discretion of the Supplier.

11. Statements by Supplier

- 11.1. Unless otherwise expressly specified here, no other conditions or warranties are made by the Supplier to the Buyer and any implied warranties are excluded.
- 11.2. Subject to the provisions of the Trade Practices Act 1974, or any other relevant Federal or State legislation which by law cannot be excluded, restricted or modified, no warranty is made by the Supplier as to the quality, fitness for purpose or merchantability of the Goods.
- 11.3. The Supplier shall not be liable to the Buyer whatsoever for any damages or losses (including consequential losses) for any breach of a condition or warranty to the Buyer (express or implied) or negligence or in any circumstances for any technical advice or assistance given or rendered by it to the Buyer.
- 11.4. Should liability arise for any reason whatsoever notwithstanding this clause 11, liability of the Supplier shall be limited to:
 - The refund of the price paid by the Buyer for the Goods or the issue of a credit note for such amount; or
 - The replacement of the Goods or the supply of equivalent Goods; or
 - The repair of the Goods.

12. Force Majeure

- 12.1. If by reason of any fact, circumstance, matter or thing beyond the control of the Supplier, the Supplier is unable to perform in whole or in part any of its obligations, the Supplier shall be released of that obligation and shall not be liable to the Buyer for such inability whatsoever.

13. Changes of Ownership

- 13.1. Any change of controlling ownership, legal status or financial position of the Buyer shall be advised to the Supplier in writing immediately.

14. Confidentiality

- 14.1. The Buyer agrees that all manuals, price lists, marketing material and any or all items displaying any logos or trademarks owned by the Supplier are proprietary property works of the Supplier and shall remain confidential to the Buyer.
- 14.2. These items shall not be used for any purposes other than intended without the written consent of the Supplier. The Supplier reserves the right to remove or recall any of the above items without notice.

15. Severability

- 15.1. If it is held by any Court that any part of these Terms and Conditions is void, voidable or unenforceable then that part

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shall be severable from and shall not affect the continued operation of these Terms and Conditions.

16. Jurisdiction

- 16.1. Any dispute arising between the Supplier and the Buyer shall be governed by the law of the State of Queensland and all disputes to be settled shall be subject to the jurisdiction of the appropriate Court in the State of Queensland.

17. Changes or Alterations to the Terms and Conditions

- 17.1. Any indulgence or allowance or relaxation of these terms shall not constitute a waiver of the rights of the Supplier under these Terms and Conditions.
- 17.2. Any variation to these Terms and Conditions by the Buyer and the Supplier agreed to at the Buyer's request must be in writing.
- 17.3. These Terms and Conditions are subject to change by the Supplier without notice.