

TERMS AND CONDITIONS OF SALE



These are the entire Terms and Conditions of Sale of all goods merchandise and services ("the goods") supplied by **ALPINE NURSERIES SALES PTY LTD (ACN 099 016 789)** and its associated and subsidiary companies (all of which are referred to as "ALPINE") to any person, firm or company placing an order with ALPINE for the purchase of any goods ("the Customer"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of ALPINE and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

GENERAL

1. No quotation by ALPINE shall constitute an offer. All quotes remain open for acceptance by the Customer and ALPINE within thirty (30) days.
2. All orders placed with ALPINE shall only be accepted subject to these Terms and Conditions. ALPINE may at any time, and from time to time alter these Terms and Conditions of Sale and such altered Terms and Conditions of Sale shall apply after notification by ALPINE to the Customer.
3. If a Customer cancels or alters any order or part order, the costs of which ALPINE are liable for, after ALPINE has received the order then ALPINE reserves the right to charge to the Customer the costs of those goods, irrespective of whether they have already been acquired for the order.
4. Goods and Services Tax ("GST") Sales Tax or any other applicable tax or duty payable shall be paid by or reimbursed by the Customer to ALPINE on demand and the Customer shall indemnify and keep indemnified ALPINE in respect of all taxes and duties including GST arising out of any sale of goods or the subsequent use of goods after the sale to the Customer.

PRICES AND DELIVERY

5. Prices quoted expire sixty (60) days after the date of order and thereafter are subject to increases without notice at any time at the discretion of ALPINE.
6. Unless otherwise indicated, prices do not include delivery.

TERMS OF PAYMENT

7. For all non-account (COD) Customers, payment must be made before plants are despatched to the customer. The granting of credit to a Customer shall be at the absolute discretion of ALPINE and unless otherwise demanded by ALPINE account customers shall make payment of all amounts payable within thirty (30) days after the end of the month of delivery or the month of Invoice, whichever is the earlier.
8. Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off. The Customer agrees to pay ALPINE Administration and Handling fees in respect of any copies of documents required or other processing involved in the conduct of the account including but not limited to account administration fees, Merchant or other fees incurred as a result of payment by credit or charge card or Bpay or payment by any other means and such fees will be charged to the Customer's account.
9. If the Customer fails to make payment in accordance with Clause 7, ALPINE shall be entitled to:-
10. Require the payment of cash before delivery of any further goods;
11. Charge an interest charge at the rate of one point seven five percentum (1.75%) per month on a cumulative basis on all overdue amounts (including late payment charges and amounts other than the price) calculated on a day to day basis on any monies due but unpaid, such interest charge to be computed from the due date for payment AND the parties agree that such interest charge is not a penalty but is a

true measure of damages incurred by ALPINE. Payments received from the Customer will be credited first against any interest charge and all such fees shall be payable on demand;

12. Claim from the Customer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by ALPINE to recover monies or goods due from the Customer including but not limited to any mercantile agents costs and legal costs and disbursements on a solicitor-client basis; and
13. Cease any further deliveries to the Customer and to terminate any agreement in relation to goods that have not been delivered.
14. Customers having overdue accounts will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until their accounts are no longer overdue.

DELIVERY

15. Unless alternative arrangements have been made with ALPINE, the Customer shall be responsible for the cost of any delivery made ex-ALPINE store. If ALPINE is requested to arrange for delivery of products beyond the store, the Customer shall pay the delivery charges stipulated by ALPINE from time to time. ALPINE shall in all cases be entitled to choose the method of transport.
16. Any date or time quoted for delivery is an estimate only and ALPINE shall endeavour to effect delivery at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render ALPINE liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
17. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery or any strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, floods, storm or tempest, transport delays, acts of God, restrictions or intervention imposed by any laws, regulations, governments or agencies thereof and any other cause beyond the control of ALPINE or any other cause whatsoever.
18. ALPINE's obligation to deliver shall be discharged on arrival of the goods at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the goods upon delivery, provided that if the Customer is unable or unwilling to accept physical delivery of the goods when the goods are ready for delivery, ALPINE shall be entitled to charge a fee for any delay experienced or arrange for the storage of the goods at the risk and cost of the Customer including all transportation, storage and other consequential costs. ALPINE may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions of Sale.

INSPECTION

19. The Customer shall examine the goods immediately after delivery and ALPINE shall

not be liable for any misdelivery, shortage, defect or damage unless ALPINE receives details in writing within forty-eight (48) hours of the date of delivery of the goods.

PROPERTY AND RISK

20. Notwithstanding delivery of the goods or their installation, property in any given goods shall remain with ALPINE until the Customer has paid and discharged any and all other indebtedness to ALPINE on any account whatsoever, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.
21. The risk in the goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.
22. The Customer acknowledges that it is in possession of the goods solely as a bailee for ALPINE until payment as defined in clause 7 has been made in full to ALPINE and until such payment:
23. The Customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and
24. The Customer shall store the goods separately from its own goods and those of any other party and in a manner which clearly identifies the goods, whether as separate chattels or as components, as the property of ALPINE.
25. The Customer shall maintain records of goods owned by ALPINE identifying them as ALPINE's property, of the persons to whom the goods are sold or disposed to and of the payments made by such persons for such goods. The Customer shall allow ALPINE to inspect these records and the goods themselves on request.
26. The Customer hereby irrevocably grants to ALPINE, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the goods the property of ALPINE in accordance with the Terms and Conditions of Sale without in any way being liable to the Customer or any person claiming through the customer. ALPINE shall have the right to sell or dispose of any such goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.
27. ALPINE licenses the Customer to install the goods. If the goods are affixed to other materials, the totality thereof shall be the sole and exclusive property of ALPINE until payment as defined in clause 7 has been made in full to ALPINE unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.
28. The Customer shall be at liberty to agree to sell the goods (independently or affixed to

Signed by the Applicant x

x

other materials) subject to the condition that until payment has been made in accordance with clause 7, the Customer shall sell as an agent and bailee for ALPINE and that the entire proceeds from the sale thereof shall be held in a separate account on trust for ALPINE.

29. The right to on-sell, deal or otherwise dispose of the goods in the normal course of trade may be revoked at any time by ALPINE and shall automatically cease if a Receiver is appointed over any of the assets on the undertaking of the Customer or if a winding up order is made against the Customer or if the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or administration or calls a meeting of, or makes any arrangement or composition with, creditors or commits any act of bankruptcy or where the Customer is in default of any of its obligations to ALPINE.

WARRANTY

30. Subject to payment in full being made as defined in clause 7, ALPINE shall use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it receives in respect of goods supplied to the Customer.

LIMITATION OF LIABILITY

31. These Terms and Conditions of Sale do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified.
32. i) In the case of goods supplied by ALPINE to a Customer who is not a "consumer" (as defined in the Trade Practices Act, 1974 as amended from time to time ("the Act")), if the goods do not correspond with the description of them on the invoice or are defective, then provided that the goods are preserved intact and made available for inspection by a representative of ALPINE and are returned to ALPINE in the same order and condition as that in which they were delivered, ALPINE shall at its option replace those goods or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within forty-eight (48) hours of the date of delivery of those goods.
33. ii) Should the Customer seek indemnity from ALPINE in respect of any claim by a consumer on the Customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of goods by the Customer to that consumer, sub-paragraph (i) will not apply and in respect of goods that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods") ALPINE's liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay to the Customer an amount equal to the cost of replacing the goods or the cost of obtaining equivalent goods or the cost of having the goods repaired, whichever is the lesser amount.
34. In the case of goods supplied by ALPINE to a Customer who is a consumer, to the extent that the goods are not consumer goods or goods, the liability of ALPINE to the Customer for breach of any warranty or condition (other than a warranty or condition implied by section 69 of the Act) or for breach of any duty of care shall in all cases be limited, at the option of ALPINE, to any one or more of the replacement of the goods or the supply of equivalent goods, the repair of the goods or

acquiring equivalent goods or the payment of the cost of having the product repaired.

35. Except for those conditions and warranties implied by the Act or other sale of goods or consumer protection legislation which may not be excluded, the Customer agrees that:
36. It has not relied on any inducement, representation or statement made by or on behalf of ALPINE in purchasing the goods and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of ALPINE); and
37. This clause sets out the entire liability of ALPINE in respect of its liability under the Act or otherwise in respect of liabilities to a consumer for a breach of a condition or warranty with respect to the sale of goods or goods. In no circumstances will ALPINE incur any liability in respect of or arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.

FORCE MAJEURE

38. ALPINE shall not be liable for any failure or delay in supply or delivery the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of ALPINE including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, frost, hail, plant disease or contamination, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, civil commotions or accidents of any kind.

TERMINATION

39. If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors of if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator or administrator is appointed, ALPINE may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any goods not paid for in accordance with these Terms and Conditions.

RETURNS

40. Other than in respect of ALPINE's obligations pursuant to clause 19 hereof ALPINE shall not be liable to accept any returned goods but may in its absolute discretion accept the return of goods, provided that such goods shall only be accepted for return with the prior written approval of a duly authorised representative of ALPINE. Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the invoiced value of the returned goods. Return freight and other expenses will be paid for by the Customer and no returns of special goods will be accepted. Any returned goods must be accompanied with the relevant invoice numbers and/or a Goods Return Authority.

GOVERNING LAW

41. The Customer agrees that these Terms and Conditions of Sale shall be construed

according to the laws of the State or Territory as ALPINE may in its sole discretion determine. Proceedings by either ALPINE or the Customer may be instituted and/or continued in such State or Territory as ALPINE may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws that State.

SERVICE OF DOCUMENTS

42. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.

STATEMENT OF DEBT

43. A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of ALPINE shall be prima facie evidence of the amount of indebtedness of the Customer to ALPINE at that time.

ELECTRONIC COMMUNICATIONS

44. a) The customer agrees to accept service of notices under the Building And Construction Industry Security Of Payment Act 1999 (NSW) (as amended) ("the NSW Act 1999"), or any like or similar legislation that may be applicable in the State or Territory where the goods were delivered to the Customer, via e-mail (in addition to any and all other forms of service authorised under the Act, or regulations made pursuant to the Acts).
45. b) In addition to delivery in person, via post and via facsimile, the customer agrees to have invoices sent via email.
46. c) The Customer agrees that email communications from ALPINE to the Customer constitute an "electronic communication" within the meaning of the Electronic Transactions Act 2000 (NSW).
47. d) The Customer agrees that in agreeing to receive invoices via email, and the service of notices under the NSW Act 1999 or any like or similar legislation that may be applicable in the State or Territory where the goods were delivered to the customer via email, the Customer is in both instances designating "an information system for the purpose of receiving electronic communications" within the meaning of the Electronic Transactions Act 2000 (NSW).
48. e) The Customer agrees that evidence of the "dispatch" (within the meaning of the Electronic Transactions Act 2000 (NSW) by ALPINE of an email is also prima facie evidence of the "receipt" of the email by the Customer within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.