
TERMS AND CONDITIONS

1. Definitions and interpretation:

Supplier means: ALPINE NURSERIES SALES PTY LTD.

Conditions means: these Terms and Conditions.

Consequential Loss means: loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Customer means: the party making this application or the party to whom the supplier has agreed to supply goods.

Goods means: any goods or services supplied by the Supplier.

Insolvency Event means: for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

Job Site means: any site, place, location, spot or position nominated by the Customer for delivery of the Goods.

Loss means: any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

Order means: any request for the supply of Goods received by the Supplier from the Customer.

Price means: the monetary amount payable by the Customer to the Supplier for the Goods.

Real Property means: all real property interests held by the Customer now or in the future.

Supplier Terms & Conditions means: any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, quotation, through the Supplier's website, docket or otherwise), or supply agreement (however described) in the Supplier's standard form entered into in writing between the Supplier and Customer.

Singular words: include the plural and vice versa.

2. Conditions:

- (a) These Conditions govern the terms of trade, including the extension of credit, in connection with the supply of Goods by the Supplier to the Customer.
- (b) These Conditions are incorporated by reference as part of the Supplier Terms & Conditions. These Conditions shall be binding as between the Supplier and the Customer and should be read together with the Supplier Terms & Conditions. To the extent of any inconsistency, the Supplier Terms & Conditions, (excluding these Conditions) will prevail over these Conditions.

3. Customer obligations:

- (a) These Conditions apply if the Supplier accepts any order for Goods from the Customer, whether for cash or on credit. The Customer has no entitlement to credit unless, in the Supplier's sole discretion, the Supplier extends credit to the Customer.

If, in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods to the Customer and to refuse to supply any Goods to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.

- (b) If the Customer fails to comply with any of the terms of these Conditions or suffers an Insolvency Event, the balance of the Customer's account to the Supplier will become due and payable immediately.
- (c) The Customer agrees that it must:
 - (i) pay, without any deduction or setoff, the price charged by the Supplier for Goods supplied to the Customer prior to delivery, or, if credit terms are offered, within 30 days following the end of the month during which the goods were supplied, time being of the essence.
 - (ii) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by the Supplier in respect of Goods supplied to the Customer.
 - (iii) advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring.

The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods supplied.

4. Orders, Quotes & Delivery:

(a) **Quotations:**

- (i) Provision of a quotation by the Supplier to the Customer does not constitute a Contract.
- (ii) The Supplier may at any time, and in its absolute discretion, amend or withdraw a quotation.
- (iii) A quotation remains open for acceptance until the date specified in the quotation, and if no date is specified, for 30 days from the date of the quotation.

(b) **Price:**

- (i) All Goods are sold and supplied by the Supplier to the Customer for the Price.
- (ii) The Price does not include the cost of delivering or transporting Goods to a Job Site.
- (iii) If the Customer requests the Supplier to deliver or transport the Goods to a Job Site, then without being under any obligation, the Supplier may agree do so, provided that the Customer shall pay the Supplier's current delivery or transportation fees and the Supplier shall be entitled to choose the carrier for and manner of delivery or transport.
- (v) The Supplier reserves the right to increase the Price if the Customer is, for any reason, unable or fails or refuses to take delivery of the Goods within 60 days from the date of the Order. Any such increase will be at the Supplier's discretion having regard to all additional costs incurred by the Supplier as a result of the delay and in producing and delivering the Goods.

(c) **Orders:**

- (i) Any Order placed by the Customer with the Supplier for the supply of Goods shall:-
 - (i) identify the Goods;
 - (ii) specify the required date for delivery; and
 - (iii) be subject to these Conditions.
- (ii) The Customer may not vary, amend or cancel any Order received by the Supplier without the Supplier's written consent.
- (iii) The Supplier may, despite providing a quotation and in its absolute discretion and for any reason, refuse to accept any Order that may be placed with it by the Customer.

(d) **Delivery:**

- (i) Subject to Clause 4(d)(ii) below, the Customer must give the Supplier at least 5 business days written notice of the dates and times during business hours when the Customer requires delivery of the Goods.
- (ii) While the Supplier will endeavour to effect delivery of the Goods on the dates and times notified by the Customer, the Supplier is not required to do so.
- (iii) Any dates or times nominated by the Supplier for delivery of the Goods are approximate or estimates only.
- (iv) Any failure or inability by the Supplier to deliver the Goods on the dates and times nominated for delivery, whether by the Supplier or by the Customer, shall not confer any right on the Customer to cancel or terminate the Order, or to refuse to accept delivery of the Goods or to claim damages from the Supplier for breach of contract or to bring any other action against the Supplier.
- (v) If the Customer requires the Supplier to deliver the Goods to a Job Site, then the Customer must give the Supplier at least 5 business days notice of the address of the Job Site prior to delivery and must ensure that the Job Site is accessible by motor vehicles on a properly constructed road.
- (vi) After the Goods have arrived at the Job Site, the Customer shall unload the Goods at its risk and at its expense.
- (vii) If the Customer fails to unload the Goods at the Job Site or fails or refuses to accept delivery of the Goods at the Job Site, then the Supplier may return the Goods to its premises or arrange to have them stored. Any additional costs incurred by the Supplier in returning or storing the Goods, (including return transportation fees, storage fees, or other consequential costs), shall be paid by the Customer.

(e) **Inspections:**

- (i) The Customer must examine the Goods immediately upon delivery.
- (ii) If the Customer claims that the Goods have been mis-delivered or that the quantity of the delivered Goods is less than the quantity of the ordered Goods, or that the Goods are damaged, defective or faulty, then the Customer must give written notice of the claim to the Supplier within 48 hours after delivery.
- (iii) The Supplier shall be entitled to inspect the Goods for the purpose of assessing the Customer's claim.
- (iv) If the Customer fails to give written notice of the mis-delivery, differences in quantity, damage, defect or fault within 48 hours after delivery, then it shall be conclusively presumed that there was no mis-delivery, differences in quantity, damage, defect or fault with the Goods.

(f) **Returns:**

The Supplier is under no obligation to accept a return of any of the Goods from or provide a refund of the Price to the Customer, but may do so in its absolute discretion, and in any event, subject to:-

- (i) The Supplier's prior written approval;
- (ii) The Customer paying the Supplier's handling and administration fee, being an amount equal to 20% of the Price paid for the Goods; and
- (iii) The Customer returning the Goods to the Supplier at the Customer's expense and risk with any appropriate information and forms that may be required by the Supplier from time to time.

5. Miscellaneous:

- (i) The Supplier shall not be liable for any failure or delay in supplying or delivering the Goods to the Customer where such failure or delay is wholly or partly caused by circumstances beyond the the Supplier's control, including but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport or traffic delays, fire, frost, hail, plant disease or contamination, act of god, breakdown of plant and equipment, shortage of materials or labour, flood, storm or tempest, theft, vandalism, civil unrest or accidents of any kind.
- (ii) Service of any notices pursuant to these Conditions or court documents may be effected personally or by sending them to the relevant party by pre-paid post or by facsimile or by email to the party's last known address, facsimile number or email address as the case may be.
- (iii) A certificate signed by the Supplier's director, secretary, financial controller or credit manager is prima facie evidence of the amount owing by the Customer at the date of the certificate.

Terms and Conditions	2014
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- (iv) The Customer acknowledges that, to the extent possible, the Electronic Transactions Act 2000 applies to these Conditions and accepts that invoices, statements, notices, correspondence or any other documents may be sent by the Supplier to the Customer via email, facsimile or other electronic means and will be deemed to have been received by the Customer immediately after being sent by the Supplier.

6 Unpaid accounts and security:

- (a) Any amount not paid by the due date will incur interest at a rate of 10% per annum calculated on a daily basis commencing from the date of delivery of the Goods to the Supplier and ending on the date of payment.
- (b) The Customer agrees to pay all costs and expenses, (including legal costs and commissions paid by the Supplier to any commercial or mercantile agent and dishonor fees,) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 6(c).
- (c) As security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest, (both present and future), in any Real Property to the Supplier.
- (d) Without limiting the generality of the charge in clause 6(c), the Customer agrees, on request by the Supplier, to execute any documents and do all things reasonably required by the Supplier, (including if a beneficial owner, as beneficial owner under the Conveyancing Act 1919 or of any analogous implied term under the applicable governing law), to perfect the charge given in clause 6(c) including registering a mortgage security over any Real Property. The Customer indemnifies the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.
- (e) The Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property.
- (f) A statement in writing signed by any officer or employee of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall, until the contrary is proven, be sufficient evidence of the amount so due or owing.

7. Retention of title:

The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for the supply of the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms shall apply.

- (a) Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may sell such goods or use the Goods in the ordinary course of the Customer's business. As between the Customer and the purchaser of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of the Goods must be held by the Customer in a separate fund, on trust for the Supplier, and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay the Supplier for the Goods supplied by it.
- (b) Until the Goods are sold or used, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm; clearly designate the Goods as the property of the Supplier; store them in such a way they are clearly identified as the property of the Supplier; and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.
- (c) The Supplier is irrevocably entitled at any time, and from time to time, before the sale of the Goods by the Customer, to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights, whether those rights are as owner and/or unpaid Seller or otherwise, and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's property, premises or vehicles, or those of any third party.

The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' property, premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such property, premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises that may be caused by the removal of the Goods.

- (d) This reservation of title and ownership is effective, whether or not the Goods have been altered from their delivered form, or commingled with other goods.

8. Security interest:

- (a) The retention of title terms in clause 7 constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after-acquired Goods supplied to the Customer by the Supplier.
- (b) The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's purchase money security interest is a perfected security interest.
- (c) The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its purchase money security interest.
- (c) For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- (d) The Customer hereby waives any rights the Customer may otherwise have to:
- (i) receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135
 - (ii) apply to a Court for an order concerning the removal of an accession under section 97
 - (iii) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135
 - (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.
- (e) For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

9. Risk:

- (a) Risk of damage to or loss of the Goods passes to the Customer immediately on delivery of the Goods to the Customer.
- (b) Delivery of the Goods to the Customer will occur at the time when the Goods are collected from the Supplier's premises by the Customer, its employees, agents or contractors. If however, the Supplier has expressly agreed at the Customer's request to transport the Goods to a Job Site, then delivery of the Goods to the Customer will occur at the time when the Goods arrive at the Job Site and prior to unloading of the Goods by the Customer pursuant to Clause 4(d)(vi).

10. Exclusion of implied terms:

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into the Supplier Terms & Conditions, or in connection with the supply of any Goods by the Supplier under law or statute or custom or international convention, are excluded.

11. Limitation of liability:

To the maximum extent permitted by law, and subject to clauses 8 and 10, the Supplier's total liability arising out of or in connection with the performance of its obligations pursuant to these Conditions, the Supplier Terms & Conditions, or arising out of or in connection with the supply of specific Goods (including pursuant to or for breach of these Conditions, the Supplier Terms & Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

Terms and Conditions	2014
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Quality matters.

- (a) the Supplier shall have no liability to the Customer for any Consequential Loss;
- (b) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 9 (b) do not apply to the extent that any Loss is directly attributable to:
 - (i) the personal injury or death caused by the Supplier's default, breach of these Conditions or the Supplier Terms & Conditions or negligence; or
 - (ii) fraud by the Supplier.

Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

12. Limitation of liability under Australian Consumer Law Guarantees:

To the extent that the Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited, at the option of the Supplier, to one or more of the following:

- (a) replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) equivalent goods; or
- (e) the payment of the cost of having the goods repaired.

To the extent that the Goods supplied by the Supplier include services that are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited, at the option of the Supplier, to one or more of the following:

- (f) the supply of the Services again; or
- (g) the payment of the cost of having the Services supplied again.

13. GST:

If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods to the Customer, the Customer must pay to the Supplier an amount, equal to the Supplier's GST liability, at the same time as the consideration is paid for the Goods, (unless the consideration for that supply is expressed specifically to be GST inclusive).

14. Privacy disclosure and consent:

The Customer authorises the Supplier to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Customer,
- (b) use, disclose or exchange with other credit providers and entities, information about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts, and
- (c) disclose the contents of any credit report on the Customer to the Supplier and any of their solicitors and mercantile agents

15. Governing law:

These Conditions are governed by and are to be interpreted according to the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts operating in that state.

Acknowledgment and Agreement

The Customer acknowledges that the Goods it will acquire from the Supplier will be obtained for either the purpose of re-supply, (whether or not in an altered form or as part of some other process), or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

The Customer agrees to be bound by the Credit Account Terms and Conditions stated above.

Who must sign this Agreement on behalf of the Customer:

For Companies: Where there is only one director for the company, then that person must sign; where there are two or more directors for the company then two Directors or a Director and Company Secretary must sign.

Sole Traders operating under their own name or under a business name: The individual.

Partnerships: All Partners of the Partnership.

Signatory:

Witness:

Print Name:

Print Name:

Position :

Address:

Signature:

Signature:

Date:

Date:

Signatory:

Witness:

Print Name:

Print Name:

Position :

Address:

Signature:

Signature:

Date:

Date:
