

Nursery Traders Pty Ltd ACN 010 219 306

Terms and conditions of sale of products



*The Gateway to Total Plant
& Landscape Supply®*

For the market complex ('Premises') situated at

100 Tinchborne Street, Chandler, Qld., 4155

and such other premises as designated by Nursery Traders

1. Nursery Traders Pty Ltd referred to as **Nursery Traders**) acts either as principal or as agent only for various suppliers and growers of green life produce and products associated with the nursery industry (**products**). In relation to any particular sale, Nursery Traders is not acting as Principal, unless it discloses otherwise, and will be acting as agent only, and the purchaser ('Certified Client') acknowledges that at no time does ownership in the products vest in Nursery Traders and that Nursery Traders, in selling the products is acting as agent only.

Nursery Traders requires all new potential clients to register by completing an accreditation application.

Nursery Traders requires that the Certified Client provides the Certified Client Accreditation Card or number and their name for verification prior to entry to the premises. The Certified Client agrees not to assign or transfer the Certified Client Accreditation Card or allow the use of the Certified Client Accreditation Card by anyone other than a registered authorised purchaser ('Authorised Purchaser'). Nursery Traders will grant access to the premises at its complete discretion. Nursery Traders requires that all Certified Clients behave in a professional, non-discriminatory and courteous manner at all times.

If a Certified Client wishes to change the Authorised Purchasers as nominated in the Accreditation Application, the Certified Client must provide the request in writing signed by a principal of the Certified Client.

Nursery Traders in its complete discretion reserves the right to cancel a Certified Client's accreditation or an individual Authorised Purchaser within the Certified Client's accreditation with immediate effect. No correspondence will be entered into.

2. The Certified Client agrees to be bound by these Terms and Conditions on its own behalf and on behalf of the Authorised Purchaser.
3. Nursery Traders in its complete discretion reserves the right to refuse access to the Premises to any person, entity, business, or corporation.
4. The Certified Client acknowledges that certain products are plant varieties that are subject to plant breeder's rights pursuant to the *Plant Breeder's Rights Act 1994* (Cth) (**Protective Rights**). The Certified Client is aware that restrictions apply to the propagation and sale of products which are the subject of Protective Rights and the Certified Client undertakes not to exploit commercially any products that are subject to Protective Rights except in accordance with those Protective Rights.
5. The Certified Client acknowledges that certain products have trade mark protection. The Certified Client is aware that restrictions apply to the use of these trade marks and undertakes not to exploit commercially the products except in accordance with the trade marks protection.

6. The Certified Client acknowledges that certain products may from time to time be subject to regulation, including, for example, notifiable pests or diseases. The Certified Client acknowledges their responsibility with respect to notifiable pests or diseases by agreeing to be aware of, and comply with, procedures, instructions, and reporting requirements concerning notifiable pests or diseases. The Certified Client covenants to comply with its reporting requirements and advise Nursery Traders and/or the relevant regulatory authority as required by either Nursery Traders or the relevant regulatory authority.
7. The price quoted for the products is quoted for sale from the Premises on a Cash and Carry basis only and prices are subject to change without notice. The price charged to the Certified Client is the price stored on Nursery Traders computer systems at the point of sale.
8. Nursery Traders reserves the following rights in relation to the products until payment in full by the Certified Client has been received by Nursery Traders or the products have been sold by the Certified Client in the ordinary course of business:
 - (a) legal ownership of the products;
 - (b) to enter the Certified Client's premises (or the premises of any associated company or agent where the products are located) without liability for trespass or any resulting damage and retake possession of the products; and
 - (c) to keep or resell any products repossessed pursuant to (b).

Despite the above provisions, Nursery Traders will be entitled to maintain an action against the Certified Client for the purchase price of the products including fees for packaging and handling fees ('Packaging and Handling'), delivery charges ('Delivery') and packing charges ('Packing Charges') and the reasonable costs of exercising its rights under this clause, including the costs involved in reselling the products. The risk of the products will pass to the Certified Client:

- (d) in credit or Cash and Carry transactions (including transactions packed and despatched by Nursery Traders), from the time of invoicing; and
 - (e) in order/delivery transactions, from the point of dispatch at Nursery Traders' premises or the Supplier's premises or on receipt of payment, whichever comes first.
9. No claim for damaged products or alleged shortages may be made after property in the products has passed to the Certified Client.
10. Fees for delivery arranged by Nursery Traders at the Certified Client's request will be at the ruling price applying from time to time (**Delivery Charges**). Nursery Traders reserves the right to charge for packing materials and labour (**Packing Charges**).
11. If payment is made by cheque in relation to any purchase and that cheque is refused upon presentation then the Certified Client agrees to pay the reasonable costs (including all dishonour fees and the reasonable costs of exercising its rights under this clause) incurred by Nursery Traders.
12. The prices applying in relation to any products ordered or compiled by Nursery Traders on behalf of any Certified Client will be the price applying at the time of confirmation of the order by Nursery Traders.
13. At the request of a Certified Client, products may be compiled for future pick-up or delivery. The minimum quantity for this service is 6 Trays.
 - (a) If any products are compiled and/or held by Nursery Traders on behalf of a Certified Client, fees may (at the discretion of Nursery Traders) be imposed as follows:

- (i) Packaging and Handling fees in relation to the order – ten percent (10%) of invoice value;
- (ii) Packing charges; and
- (iii) Delivery charges; and
- (iv) Holding fee

At the discretion of Nursery Traders, a Holding Fee being a minimum of five percent (5%) may be charged for each month, payable after the expiration of the stated delivery date (fractions of a month will be taken into account); and

- (v) Cancellation fee

If an order is cancelled by the Certified Client, then the Certified Client agrees to pay all reasonable costs (including time and materials) incurred by Nursery Traders; and

- (vi) Re-packing fee

If the stated delivery date of an order is changed within 24 hours of the original stated delivery date or after Nursery Traders has commenced packing, then the Certified Client agrees to pay all reasonable costs (including time and materials of unpacking, delivery charges and repacking the order) incurred by Nursery Traders.

- (vii) Minimum order fee

For orders requested by the Certified Client that are less than the minimum of 6 trays, Nursery Traders reserves the right to charge a thirty dollar (\$ 30.00) Packaging and Handling Fee.

- (b) If products are ordered for delivery more than 14 days from the date of order then a non-refundable deposit of 20% of the invoice total is required at placement of the order.

14. Fees will be payable regardless of whether an order or any part thereof is cancelled by the Certified Client for whatever reason.

15. Nursery Traders is not liable for any failure or delay in supply of products for any cause beyond Nursery Traders' control including (but not limited to): labour or union difficulties; storm or tempest; flood; fire; accident; delay by the owner of the products in supply; act of God; non-availability of goods; shipping delay; or delay by bank or financial institution.

Inability by Nursery Traders to obtain or arrange delivery of products will entitle Nursery Traders (at its option) to cancel or defer the order.

16. The Certified Client is liable for and indemnifies Nursery Traders against any costs, damages and expenses resulting directly or indirectly from cancellation of any order.

17. No products may be returned to Nursery Traders without its written authority.

18. Nursery Traders makes no warranty or representation regarding the quality, nature or fitness for purpose of the products, including any capacity to transplant same. Except as set out herein, all conditions and warranties (whether express or implied by law or any statute) are expressly excluded to the extent permitted by law.

The liability of Nursery Traders for breach of any condition or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* is limited to any one or more of the remedies stated in Section 68A of that Act as Nursery Traders may elect.

The Certified Client agrees that any liability of Nursery Traders in contract for any loss or damage arising out of the purchase by it of any products will be reduced to the extent that any act or omission of the Certified Client (or of any other entity or person claiming through or under the Certified Client) contributed to or failed to mitigate the loss or damage.

The Certified Client may not make any claims for loss or damage for breach of any agreement between itself and Nursery Traders for any amount which exceeds the amount paid by the Certified Client to Nursery Traders for the acquisition of products to which the claim relates.

The Certified Client will indemnify (and keep indemnified) Nursery Traders for every claim demand or cause of action brought against Nursery Traders by the Certified Client (or any party claiming through or under the Certified Client) which does not succeed. This indemnity applies whether the claim demand or cause of action is brought against Nursery Traders alone or with others (including the Certified Client). This indemnity includes all damages, liabilities, costs, settlement costs, expenses and legal fees payable by, incurred or suffered by Nursery Traders as a consequence.

19. A Certified Client may not refuse acceptance or delivery of any products compiled and/or held on behalf of the Certified Client.
20. The Certified Client agrees it will not exchange or transfer products to third parties within the premises (including the car park areas, loading docks and road frontage) without firstly notifying Nursery Traders in writing, and providing full details thereof.
21. All Certified Clients agree to abide by the Safety Policy, dealing with (without limitation) safety on the Premises, being the current policy displayed by Nursery Traders from time to time on the web site of Nursery Traders (www.nurserytraders.com.au) or such other website as notified by Nursery Traders for that purpose ('website'). Nursery Traders may add to, or vary, the Safety Policy at any time. Changes to the Safety Policy will be updated on the website. To ensure you have the current Safety Policy please visit our website.
22. There will be no waiver of this Agreement unless made in writing and signed by the parties and failure by Nursery Traders to require performance or resort to legal remedy shall in no way affect the right of Nursery Traders to later require strict performance or seek legal remedies.
23. If any of these Terms and Conditions are void or unenforceable then it may be severed from others and the remaining Terms and Conditions will continue to the extent permissible by law.
24. These Terms and Conditions as amended in writing from time to time by Nursery Traders set out the full terms on which Nursery Traders will sell products to the Certified Client and any representations warranties or other agreements made between Nursery Traders and the Certified Client bind Nursery Traders only if made in writing and signed by Nursery Traders.
25. Nursery Traders is liable only for any damage to the products caused by wilful neglect of Nursery Traders so long as the products are in the actual custody of Nursery Traders at the time of such damage.
26. These Terms and Conditions apply to all sales. The Certified Client acknowledges that Nursery Traders may change these Terms and Conditions at its sole discretion. The Terms and Conditions in force at any time will be displayed by Nursery Traders on the web site of Nursery Traders (www.nurserytraders.com.au) or such other website as Nursery Traders notifies to the Certified Client for that purpose ('website'). The Terms and Conditions which apply to each sale are the Terms and Conditions displayed by Nursery Traders on the website immediately preceding the commencement of the relevant transaction.

27. By entering the Premises, the Certified Client acknowledges that it has read and understood these Terms and Conditions and agrees to be bound by them.

28.

- (a) Words or expressions used in this clause 28 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) For the purposes of these Terms and Conditions where the expression 'GST inclusive' is used in relation to an amount payable or other consideration to be provided for a supply under these Terms and Conditions, the amount or consideration will not be increased on account of any GST payable on that supply.
- (c) Any consideration to be paid or provided for a supply made under or in connection with these Terms and Conditions, unless specifically described in this Terms and Conditions as 'GST inclusive', does not include an amount on account of GST.
- (d) Despite any other provision in these Terms and Conditions, if a party (**GST Supplier**) makes a supply under or in connection with these Terms and Conditions on which GST is imposed (not being a supply the consideration for which is specifically described in these Terms and Conditions as 'GST inclusive'):
 - (i) the consideration payable or to be provided for that supply under these Terms and Conditions but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**GST Recipient**) must also pay to the GST Supplier, an amount equal to the GST payable by the GST Supplier on that supply; and
 - (ii) the amount by which the GST exclusive consideration is increased must be paid to the GST Supplier by the GST Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (e) If a payment to a party under these Terms and Conditions (including, without limiting, a payment under clause 13(a)(iii)) is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- (f) The parties acknowledge that where Nursery Traders makes a taxable supply in its capacity as agent for a supplier, that the taxable supply is made by the supplier and not Nursery Traders.