

1. DEFINITIONS

"Buyer" "You" "Your" means any person, body corporate, or other entity which purchases or orders the Goods from WNA. "Goods" means all containerised plants described in any invoice issued by WNA to the Buyer and supplied, or to be supplied, by WNA to the Buyer. "We" "Us" "Our" or "WNA" shall mean and refer to the supplier or seller of the goods – Wholesale Nurseries Australia Limited (WNA) ABN 93 948 762 213.

2. GENERAL APPLICATION

These terms and conditions of sale apply to and govern all orders placed with, and all contracts entered into by, WNA in relation to the supply of Goods. These Conditions constitute the entire agreement between the Buyer and WNA for the supply of Goods.

2.1 A contract for the sale of Goods by WNA to the Buyer will be formed upon the acceptance by WNA of a written order (acceptance of which need not be communicated to the Buyer to be effective) for the Goods by the Buyer ("Contract"). The Buyer acknowledges that it will be bound by these Standard Terms and Conditions.

2.2 Any quotation issued by WNA is not to be construed as an offer or obligation by us to sell and we reserve the right at our option to accept or reject any orders received.

2.3 No terms stated by the Buyer in making an order and no waiver or alteration of the Conditions will be binding upon WNA unless WNA agrees in writing.

3. PRICE OF GOODS

3.1 Unless otherwise stated by WNA in writing the purchase price for the Goods does not include the cost of delivery of the Goods to the agreed destination specified by the Buyer and all costs, charges or expenses incurred by WNA in relation to delivery are payable by the Buyer.

3.2 If the prices quoted by WNA for the supply of Goods exclude goods and services tax ("GST") then the Buyer must also pay to WNA an additional amount in respect of GST imposed on WNA calculated by multiplying the price by the prevailing GST rate.

3.3 Any additions or increases in the cost of the supply of Goods as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with the manufacture or supply of Goods by WNA between the date of WNA's relevant quotation or, where there is no such quotation, from the date of WNA's acceptance of the Buyer's order, as the case may be, and the date of supply of the Goods will be borne by the Buyer.

4. TERMS OF PAYMENT

4.1 WNA will invoice the Buyer upon delivery of the Goods.

4.2 A statement will be issued to the Buyer once a month.

4.3 The Buyer must pay the purchase price for the Goods, without deduction, within 30 days of the date of the relevant statement.

5. DELIVERY

5.1 WNA will deliver the Goods by:

5.1.1 delivering the Goods to the address nominated in writing by the Buyer and agreed to by WNA; or

5.1.2 making the Goods available for collection by the Buyer at WNA's premises which will be deemed to be delivery.

Where Goods are to be delivered to a nominated address WNA will be deemed to have delivered the Goods in accordance with the Contract if it obtains a receipt or signed delivery docket for the Goods from any person at that address.

5.2 In no event will WNA incur any liability due to any failure on its part to supply Goods by an agreed date or time.

5.3 WNA reserves the right to withhold deliveries if the terms of payment for any Goods are not strictly adhered to by the Buyer.

5.4 Unless otherwise agreed in writing you shall take delivery of the goods at our address notified to you or set out in the contract documents and the cost of transport to your premises shall be borne by you and we will not be responsible for any loss or damage of the goods after delivery thereof to your carrier notwithstanding that we may have arranged the carrier at your request.

6. TITLE

Notwithstanding that the Buyer has possession of the Goods, title to the Goods remains with WNA, and no legal or equitable interest or property in the Goods whatsoever will pass to the Buyer, until the full amount for the Goods has been paid and there is no money owing by the Buyer to WNA for any other Goods delivered by WNA or on any account whatsoever.

In the event of default in your obligations under these terms and conditions of sale we or our agents may without notice to you enter your premises, with the purpose of recovering the goods.

We may recover and resell the goods and apply the proceeds in reduction of any indebtedness you may have to us.

7. WARRANTY AND LIABILITY

7.1 To the fullest extent permitted by law:

7.1.1 No claim in relation to defective Goods may be made unless such a claim is made by the Buyer to WNA within 24 hours of delivery of the Goods to the Buyer;

7.1.2 WNA will not be liable for any claim whatsoever in respect of the Goods unless made in writing.

7.2 The Buyer acknowledges that it relies on its own skill and judgment in relation to Goods supplied to it by WNA and WNA will be under no liability for any unsuitability of the Goods for any purpose irrespective of any knowledge which it may possess as to the purpose for which the Goods were required by the Buyer unless:

7.2.1 that purpose has been specifically notified to WNA in writing prior to the formation of the relevant Contract; and

7.2.2 WNA has provided to the Buyer written confirmation executed by a technical manager of WNA of the suitability of the Plants for the purpose notified by the Buyer.

7.3 WNA will not be liable to the Buyer, its servants, agents or contractors, for any damages of any nature or any claim whatsoever arising directly or indirectly out of or in any way attributable to the failure of the Buyer to care for the plants in a manner that meets nursery industry standards.

7.4 The liability of WNA pursuant to any provision of relevant legislation of Australia or any State or Territory or pursuant to any other potential liability, whether arising from negligence or not, including any consequential loss which the Buyer may sustain or incur will be limited to one of the following at the election of WNA:

7.4.1 replacement of the Goods or supply of equivalent goods; and

7.4.2 payment of the cost of replacing the Goods or acquiring equivalent goods.

Where WNA elects to replace the Goods under this clause WNA will credit the cost of the Goods being replaced and will replace them as soon as possible with other goods of the same or equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original Goods were subject.

7.5 Notwithstanding any other provision of these Conditions, WNA will not be liable to the Buyer, its servants, agents or contractors, for any indirect, incidental or consequential damages or losses of any nature whatsoever caused (whether based in tort or contract or otherwise) including any damage to property owned by the Buyer or any other claim whatsoever, arising directly or indirectly out of or in any way attributable to the Goods, or their delivery, or the performance of the Contract for the sale of the Goods upon these Conditions.

7.6 Subject to this clause 7 but notwithstanding any other provision of these Conditions or any other agreement, if any liability on the part of WNA arises to or in favour of the Buyer (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of Goods by WNA, WNA's liability in all and any circumstances will be limited in aggregate to the payment by WNA of a sum not exceeding 100% of the amount payable to WNA pursuant to the relevant Contract.

8. TERMINATION

Without prejudice to any of its other rights, powers or remedies, WNA may cancel any order for the supply of Goods and terminate any Contract governed by these Conditions if:

8.1 the terms of payment for any Goods delivered to the Buyer by WNA have not been strictly adhered to by the Buyer;

8.2 the Buyer defaults under any of its obligations under these Conditions;

8.3 the Buyer becomes insolvent, commits an act of bankruptcy or being a company, a receiver or receiver and manager or administrator is appointed, a mortgagee goes into possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up, is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors; and

8.4 WNA will be released from all liability under the Contract and WNA will be entitled to payment for all Goods consigned up to the effective date of termination.

9. GOODS RETURNED FOR CREDIT

No claim in relation to damaged, diseased or poor quality goods will be considered without photographic evidence and notification to WNA in writing within seven days of delivery. In all cases the original invoice or delivery docket must be quoted and return

freight must be paid by the customer.

10. FORCE MAJEURE

Should WNA be delayed, hindered, or otherwise prevented from complying with these Conditions by reason of events or circumstances beyond the reasonable control of WNA, including but not limited to Acts of God, wars, riots, strikes, lock-outs, trade disputes or labour disturbances, break down of plant or machinery, accident, storm, fire, flood, difficulties in obtaining materials, transport or labour or any other circumstances affecting the supply of Goods, then WNA will not be liable to the Buyer for any loss or damage which may be suffered by the Buyer whether as a direct or indirect result of any such occurrences.

11. GOVERNING LAW

The conditions are to be governed by and interpreted in accordance with the laws of Queensland.