

## Terms of trade

### 1. GLOSSARY OF TERMS

In these Terms of Trade:

**Additional Charge** includes:

- (a) Holding Costs;
- (b) the cost to 'pot-up' Plants;
- (c) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices;
- (d) Losses, costs and expenses incurred by us because of the failure of the Customer to return materials used by us to deliver the Goods and Services (including tubes, pots and trays);
- (e) expenses incurred by Us at the Customer's request or reasonably required as a result of the Customer's conduct.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

**Customer** means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

**Delivery Date** means the date for delivery of Plants set out in the Quote.

**Deposit** has the meaning given to it in clause 3.

**Goods** means any goods, including Plants, supplied by the Supplier including those supplied in the course of providing Services.

**Holding Costs** means costs incurred by Us (directly or indirectly) to keep, store, maintain and care for Plants and is calculated as **20% of the gross value of the Order** (whether in whole or part thereof) calculated per month (or pro-rata for periods less than one month or including a part of a month).

**Loss** includes, but is not limited to, costs (including party to party legal costs), expenses, lost profits, award of damages, personal injury and property damage and loss of use, production, profit, business, contracts, revenue or anticipated savings, any increases in operating costs or any other financial or economic loss or any indirect or consequential loss or damage whatsoever.

**Order** means a purchase order for Goods or Services placed by a Customer in response to a Quote (in accordance with clause 3.1(c)) and as varied in writing from time to time by the parties.

**Plants** includes any plant, cutting, propagation material, seed and seedling.

**Quote** means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

**Services** means the services to be provided by the Supplier to the Customer including services provided in the course of supplying any goods.

**We, Us, Our** means **Territory Native Plants Pty Ltd ACN 655 726 417** and unless the contrary intention appears, includes our employees, contractors, agents and permitted assigns.

## **2. GENERAL**

- (a) These terms of trade apply to all transactions between the Customer and Us relating to the provision of Goods and Services. This includes all quotations, contracts and variations.
- (b) These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.
- (c) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless expressly agreed in writing by the parties.

## **3. QUOTING AND ORDERING**

### **3.1 Quotes**

- (a) We may provide the Customer with a Quote. Any Quote issued by Us is valid for **48 hours** from the date of issue. Quotes will be provided by email to the Customer.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery, planting or installation of the Goods.
- (c) Following provision of a Quote to the Customer, We are not obliged to commence propagation or other work until the Quote has been accepted by the Customer. This occurs by the Customer;
  - (i) accepting the Quote by clicking the "accept quote" link provided on the emailed quote; or
  - (ii) providing us with a purchase order in reply to a Quote; or
  - (iii) on receipt by us of a Deposit (if a deposit is payable in respect of the Quote).
- (d) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding on Us.

### **3.2 Orders**

- (a) A Quote accepted in accordance with clause 3.1(c) is an Order.
- (b) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered and Our Quote. Any costs incurred by Us in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (c) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by Us relating to that Order.
- (d) We may in Our absolute discretion refuse to provide, vary or replace the Goods or Services provided where:
  - (i) Goods are unavailable for any reason whatsoever;
  - (ii) The Plants suffer poor germination, growth rates, plant health and condition, risk of environmental peril or a failure to thrive, or any other unforeseeable circumstance impacting our ability to provide the Goods or Services or to provide Plants in good condition, health and viability;
  - (iii) credit limits cannot be agreed upon or have been exceeded; or

- (iv) the Customer has a poor payment history, whether with Us or with other suppliers or payment for Goods or Services previously provided to the Customer, has not been received by Us

*(Examples: failure to pay previous invoices within Our 14-day payment terms, a history of late or under payments, or customers with poor credit rating);*

- (e) An Order cannot be cancelled without Our prior written consent. Where an Order is cancelled, the Customer indemnifies Us against any Losses incurred by Us as a result of the cancellation. This indemnity includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

### **3.3 Variations**

- (a) The Customer may request that its Order be varied by providing a request in writing to Us. A request for a variation must be agreed to in writing by Us in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by Us or after the placement of an Order, We reserve the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by Us in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.
- (c) We will have an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

## **4. DEPOSITS, INVOICING AND PAYMENT**

### **4.1 Deposit**

We may require the Customer to pay:

- (a) a non-refundable 'sowing' deposit equal to 15% of the gross value of the Order payable before we commence any work or undertakings in respect of the Goods and Services to be provided under the relevant Order; and/or
- (b) a non-refundable 'prick out' deposit equal to 10% of the gross value of the Order, payable at the time of germination of the Plants,

(Deposit).

The Customer's obligation to pay the Deposit/s will be set out in the Quote (if required).

### **4.2 Invoicing**

- (a) We may issue an invoice to the Customer in any one or more of the following ways:
  - (i) in respect of a deposit payable under clause 4.1, prior to commencing work, or otherwise at such time as those deposits become payable;
  - (ii) on the delivery of the Plants or the completion of the provision of the Goods or Services or any time thereafter, for an amount equal to:
    - (A) the Quote, less any Deposits paid under clause 4.1, PLUS
    - (B) any Additional Charges; PLUS
    - (C) any amount not previously invoiced, or

- (iii) if no Quote was provided, an amount representing our standard fees and charges for the work performed in completing the Order PLUS any Additional Charges; or
  - (iv) as otherwise agreed between Us and the Customer.
- (b) The amount payable by the Customer will be the amount set out in the invoice.

### **4.3 Payment**

- (a) The Customer must pay Our invoice within **14 days** of a valid tax invoice being issued to the Customer.
- (b) If any invoice is due but unpaid, We may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (c) The Customer is not entitled to retain any money owing to Us notwithstanding any default or alleged default by Us of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision or Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

### **4.4 Additional Charges**

- (a) We may require the Customer to pay Additional Charges in respect of costs incurred by Us as a result of reliance on inadequate, incorrect or late information provided by the Customer in order for Us to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
  - (i) Plants not delivered to the Customer within **21 days** of the Delivery Date because of the Customer's request to delay delivery of Plants or the failure by the Customer to accept delivery of Plants within **21 days** of the Delivery Date;
  - (ii) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier; or
  - (iii) additional work required by the Customer or any other occurrence which causes Us to incur costs in respect of the Customer's Order additional to the quoted cost.

### **4.5 Late Payment**

- (a) The Customer is to pay to Us on demand interest at the rate of 10% per year on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (b) All costs and expenses associated with collecting overdue amounts, including (but not limited to) Our legal fees and internal costs and expenses, are to be paid by the Customer as a debt due and payable under these terms of trade.

### **4.6 GST**

The parties agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

## 5. ACCEPTANCE OF GOODS

### 5.1 Failure to Notify of Fault

If the Customer fails to advise the Supplier in writing of any fault in the Goods or failure of Goods to accord with the Customer's Order within **24 hours** of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

### 5.2 Failure to Accept Delivery on Date for Delivery

If the Customer fails to accept delivery of any or all Plants on the Delivery Date and that failure to accept delivery continues for 21 Days (even if partial delivery has been accepted by the Customer), then We may, without further notice to the Customer;

- (a) terminate the Order, and
  - (i) invoice the Customer for any Additional Charges incurred by Us; and
  - (ii) on-sell the Plants, or keep the Plants on-hand for on-sale, to a third party; or
- (b) keep the Order on foot; and
  - (i) invoice the Customer for any Additional Charges incurred by Us;
  - (ii) on-sell the Plants, or keep the Plants on-hand and in Our stock to sell, to a third party; and
  - (iii) vary the Order by extending the Delivery Date to allow for the re-ordering of materials and to re-plant and grow the Plants required for the Order.

## 6. TITLE AND RISK

- (a) Risk in Goods passes to the Customer immediately upon delivery.
- (b) Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between Us and the Customer) due and payable to Us by the Customer has been fully paid.
- (c) Where Goods are supplied by Us to the Customer without payment in full, the Customer:
  - (i) is a bailee of the Goods until property in them passes to the Customer;
  - (ii) irrevocably appoints Us as its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in Our favour with respect to the Goods under applicable law (including under the *Personal Property Securities Act 2009* (Cth) (**PPSA**));
  - (iii) must be able upon demand, to separate and identify the Goods supplied by Us held by the Customer;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;
  - (v) agrees that We may repossess the Goods if payment is not made within **14 days** (or such longer time as We may, in our absolute discretion, approve in writing) of the supply of the Goods; and
  - (vi) grants an irrevocable licence to Us or Our agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph and the Customer

indemnifies Us for any damage to property or personal injury which occurs as a result of Us or Our agent entering the Customer's premises.

- (d) Where we supply Goods to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided, the Customer acknowledges that We have a right to register and perfect a personal property security interest on the Personal Property Security Register under the PPSA.

## 7. DEFAULT BY CUSTOMER

- (a) Each of the following occurrences constitutes an event of default:
- (i) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within **14 days** of being given notice by the Supplier to do so;
  - (ii) the Customer, being a natural person, commits an act of bankruptcy;
  - (iii) the Customer, being a corporation, is subject to:
    - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
    - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* being appointed to all or any part of the Customer's property and undertaking;
    - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
    - (D) any assignment for the benefit of creditors;
  - (iv) the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
  - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
- (i) terminate these terms of trade;
  - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
  - (iii) refuse to deliver Goods or provide further Services;
  - (iv) pursuant to clause 6(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
  - (v) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under paragraph 7(b), on the occurrence of an event of default all invoices will become immediately due and payable.

## **8. GUARANTEES, EXCLUSIONS AND LIMITATION OF LIABILITY**

### **8.1 Our Guarantee and Exclusion**

- (a) We guarantee to the Customer that all Plants will be delivered free from defects, healthy and alive. This guarantee does not extend to Goods (other than Plants).
- (b) Whilst We are confident that all Plants delivered will be accurate as to species ordered, We provide no guarantee as to provenance, growth habit, purity or resultant crop.
- (c) Subject to clause (a), We give no warranty in relation to the Services provided or supplied. This includes the timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
  - (i) any Goods or Services supplied to the Customer;
  - (ii) any delay in supply of the Goods or Services; or
  - (iii) any failure to supply the Goods or Services.

### **8.2 Customer Acknowledgement**

The Customer expressly acknowledges and agrees that on and from delivery the responsibility for plant care and maintenance and the health, condition, performance and survival of Plants is at the Customer's risk and further that We are not responsible or liable for plant death, disease, natural peril, failure to thrive, seed or germination viability or growth rates.

### **8.3 Limitation of Liability**

- (a) Except for damages arising directly from our guarantee in clause 8.1, We will have no liability to the Customer for any Loss whether suffered by the Customer or by any third party.
- (b) Our total liability to the Customer will not, in any event, exceed in aggregate an amount equal to the amount paid by the Customer under the relevant Order.
- (c) Any advice, recommendation, information, assistance or service given by Us in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability and We do not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (d) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

## **9. FORCE MAJEURE**

- (a) If circumstances beyond Our control prevent or hinder Our provision of the Goods or Services, We are free from any obligation to provide the Goods or Services while those circumstances continue. We may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

- (b) Circumstances beyond Our control include, but are not limited to, unavailability of materials (including seeds, seedlings), plant disease outbreaks, strikes, lockouts, riots, natural disasters, fire, war, extreme weather events, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

## **10. MISCELLANEOUS**

- (a) **(Jurisdiction)** These terms of trade are governed by the laws of the Northern Territory of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the Supreme Court of the Northern Territory of Australia.
- (b) **(Whole Agreement)**
  - (i) These terms of trade and any Quotes, Orders and written variations agreed to in writing represent the whole agreement between the parties relating to the subject matter of these terms.
  - (ii) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (c) **(No Warranty)** In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by Us or any of Our employees or agents relating to or in connection with the subject matter of these terms of trade.
- (d) **(Severability)** If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (e) **(No Waiver)** A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.