

## Conditions of Sale

### 1. DEFINITION

In these terms and conditions:

"Goods" means all products and services agreed to be supplied by Horticultural & Landscape Supplies or a supplier which has entered into an arrangement with Horticultural & Landscape Supplies to supply products or services to the Buyer under any contract, arrangement or understanding between Horticultural & Landscape Supplies and the Buyer including but not limited to goods described in any invoice Horticultural & Landscape Supplies issues to the Buyer;

"Buyer" means the person making the application or entering into a Contract with Horticultural & Landscape Supplies;

"Contract" means any contract for the sale or supply of Goods entered into between Horticultural & Landscape Supplies and the Buyer and includes these Conditions of Sale;

"Horticultural & Landscape Supplies" means THE TRUSTEE FOR SKEG TRUST T/A HORTICULTURAL & LANDSCAPE SUPPLIES ABN: 80 470 878 451 and controlled entities, its agents, servants and employees and any related bodies corporate as defined in the Corporations Law (if such related body corporate is named as the party making or accepting the Buyer's order of Goods);

"Quoted Date" means the date of delivery as agreed between the Buyer and Horticultural & Landscape Supplies.

### 2. STATUTORY PROVISIONS

These Credit Terms are in no way affected or amended by any other express or implied terms contained in any terms of sale in relation to the products and services. No terms of the Customer apply to any agreement between the Customer and Horticultural & Landscape Supplies.

These terms and conditions:

(a) shall be subject to the provisions of the Competition and Consumer Act 2010, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable State and/or Commonwealth legislation ("the Statutory Provisions");

(b) unless Horticultural & Landscape Supplies otherwise agrees in writing, these are the only terms and conditions of sale to which Horticultural & Landscape Supplies will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any); and

(c) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

### 3. WARRANTIES

Subject to the Statutory Provisions:

(a) Horticultural & Landscape Supplies warrants that the Goods supplied are of merchantable quality and shall comply with the description and specifications as set out on the label or other product documentation published by Horticultural & Landscape Supplies or the supplier;

(b) Horticultural & Landscape Supplies' liability for breach of sub-clause 3(a) or a condition or warranty implied into this Contract by law including without limitation the Statutory Provisions (other than a condition implied by sections 51, 52 or 53 of the Competition and Consumer Act 2010) is limited to any one of the following as determined by Horticultural & Landscape Supplies:

- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of the Goods or payment of the cost of having the Goods repaired; or
- (iii) the refund of the price paid by the Buyer for the Goods.

The Buyer will examine the Goods for defects and shall notify Horticultural & Landscape Supplies of any defects in writing within 30 days of delivery. If the Buyer does not notify Horticultural & Landscape Supplies within 30 days of delivery the Buyer shall be deemed to have accepted the Goods.

To the extent the law permits and notwithstanding any other clause of these terms and conditions, Horticultural & Landscape Supplies excludes all liability whatsoever to the Buyer arising out of or in any way connected with a Contract for any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not be limited to:

- (a) any loss of income, profit or business;
- (b) any loss in the nature of overhead costs; and
- (c) any loss of goodwill or reputation.

### 4. ADVICE

Subject to Statutory rights, any advice, recommendation, information, assistance or service by Horticultural & Landscape Supplies in relation to Goods sold or manufactured by it or application is given in good faith and is believed to be appropriate and reliable. However, any liability arising out of or in respect of such advice, recommendation, assistance or service provided by Horticultural & Landscape Supplies is hereby excluded.

### 5. DELIVERY

Horticultural & Landscape Supplies will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the Quoted Date, but Horticultural & Landscape Supplies shall not be liable for any failure to deliver or delay in delivery for any reason.

### 6. RISK

(a) Unless otherwise agreed in writing all risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or its agent or to a carrier commissioned by the Buyer.

(b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or its agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Horticultural & Landscape Supplies that, in the storage and handling of the Goods, the Buyer and its agents and carriers shall comply with all relevant environmental laws and regulations, and do comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and its agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.

(c) If Horticultural & Landscape Supplies does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall be liable for storage charges payable monthly on demand.

### 7. TITLE

(a) Title to and property in the Goods shall not pass to the Buyer and is reserved to Horticultural & Landscape Supplies until the total purchase price for the Goods and any other amounts outstanding to Horticultural & Landscape Supplies from the Buyer have been paid in full.

(b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of Horticultural & Landscape Supplies and that a fiduciary relationship exists between the Buyer and Horticultural & Landscape Supplies.

(c) Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Horticultural & Landscape Supplies and shall insure the Goods with a reputable insurer until title passes to the Buyer. Horticultural & Landscape Supplies shall be entitled at any time until title in and to the Goods passes to the Buyer to demand evidence of such insurance and the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer in order to search for and remove the Goods.

(d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it sells the Goods as a fiduciary agent of Horticultural & Landscape Supplies provided that such sales shall not give rise to any obligations on the part of Horticultural & Landscape Supplies. The Buyer shall hold the proceeds of sale on trust for Horticultural & Landscape Supplies in a separate account.

(e) If title in and to the Goods has not passed to the Buyer in accordance with this clause, the Buyer's implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in paragraph 11 (b)(i)-(v) hereof.

### 8. Personal Property Securities Act (Cth) 2009 ("PPSA"): "Financing statement",

"financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA. (a) In consideration of Horticultural & Landscape Supplies supplying the Products to the Customer at the request of the Customer, the Customer by signing these Credit Terms: (i) grants to Horticultural & Landscape Supplies a "Purchase Money Security Interest" ("PMSI") in all Products supplied by Horticultural & Landscape Supplies to the Customer from time to time as security for payment of the purchase price of the Products; (ii) grants to Horticultural & Landscape Supplies a "Security Interest" ("SI") in all Products supplied by Horticultural & Landscape Supplies to the Customer from time to time as security for payment of any other amount owed by the Customer to Horticultural & Landscape Supplies and as security for the performance by the Customer of the obligations set out in these Credit Terms; (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Credit Terms will come into existence subject to the PMSI and SI granted herein and these Credit Terms without the need for any further action or agreement by any party; (iv) acknowledges that the Customer has received valuable consideration from Horticultural & Landscape Supplies and agrees that it is sufficient; (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by Horticultural & Landscape Supplies to the Customer and that the attachment of the PMSI has in no way been deferred or postponed. (b) Horticultural & Landscape Supplies reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Credit Terms. (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by Horticultural & Landscape Supplies at Horticultural & Landscape Supplies complete discretion, and may, where applicable, be charged to the customer's credit account with Horticultural & Landscape Supplies. (d) The Customer must promptly, on request by Horticultural & Landscape Supplies, execute all documents and do anything else reasonably required by Horticultural & Landscape Supplies to ensure that the PMSI and SI created under these Credit Terms constitutes a perfected security interest. (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which Horticultural & Landscape Supplies has any PMSI and/or SI without the prior written consent of Horticultural & Landscape Supplies and will immediately notify Horticultural & Landscape Supplies if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products. (f) The Customer must not allow the Products to become accessions or commingled with other goods unless Horticultural & Landscape Supplies has first perfected any PMSI or SI that Horticultural & Landscape Supplies has in relation to the Products. (g) If Horticultural & Landscape Supplies perfects any PMSI and/or SI that Horticultural & Landscape Supplies has in relation to the Products, the Customer must not do anything that results in Horticultural & Landscape Supplies having less than the security or priority granted by the PPSA that Horticultural & Landscape Supplies assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage. (h) The Customer irrevocably grants to Horticultural & Landscape Supplies the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if Horticultural & Landscape Supplies has cause to exercise any of Horticultural & Landscape Supplies rights under Chapter 4 of the PPSA, and the Customer will indemnify Horticultural & Landscape Supplies for any claims made by any third party as a result of such exercise. (i) The Customer acknowledge and agrees that: - (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Credit Terms; (ii) The Security Agreement created by these Terms of Sale may only be reinstated on the terms considered appropriate by Horticultural & Landscape Supplies at its complete discretion. (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Credit Terms, and the Customer waives its right to: - (i) not have goods damaged or be inconvenienced no more than necessarily incidental if Horticultural & Landscape Supplies removes an accession under s.92 PPSA; (ii) to receive notice of any intention to remove an accession under s.95(1)(a); (iii) to apply to the Court for an order postponing the removal of the "accession" or to determine the amount payable to Horticultural & Landscape Supplies for the retention of the accession under s.97 PPSA (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA; (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA; (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA; and (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and (ix) to receive notice of a verification statement in relation to any registration event (including registration

of a financing statement or a financing change statement) relating to the PMSI and SI created under these Credit Terms under s.157 PPSA..

(e) Until ownership of the Goods passes, the Buyer must not give to Horticultural & Landscape Supplies a written demand or allow any other person to give Horticultural & Landscape Supplies a written demand requiring Horticultural & Landscape Supplies to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.

(f) The Buyer acknowledges that it has received value as at the date of first delivery of the Goods and have not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to us under these Conditions of Sale.

(g) The Buyer irrevocably grants to Horticultural & Landscape Supplies the right to enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer or to any third party, if Horticultural & Landscape Supplies has cause to exercise any of Horticultural & Landscape Supplies rights under sections 123 or 128 of the PPSA, and the Buyer shall indemnify Horticultural & Landscape Supplies from any claims made by any third party as a result of such exercise.

#### **9. PRICE**

Unless otherwise agreed in writing, the price charged for the Goods shall be the price ruling as determined by Horticultural & Landscape Supplies at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.

#### **10. FORCE MAJEURE**

Deliveries may be totally or partially suspended by Horticultural & Landscape Supplies during any period in which Horticultural & Landscape Supplies may be prevented or hindered from manufacture, delivery or supply though any circumstances outside Horticultural & Landscape Supplies reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery software, hardware or communication network. Horticultural & Landscape Supplies shall not incur any liability to the Buyer in respect of such suspension.

#### **11. PAYMENT AND DEFAULT**

Unless otherwise agreed expressly in writing, terms of payment shall be contained on the invoice. The Buyer is not entitled to withhold any payments or to refuse payment on the grounds of counter claims which are disputed by Horticultural & Landscape Supplies.

(a) **Payment:** The Customer must pay for all Products and Services supplied by Horticultural & Landscape Supplies within 30 days after the end of the month of supply or within any alternative credit period granted in writing by Horticultural & Landscape Supplies.

(b) **Interest:** Horticultural & Landscape Supplies is entitled to charge the Customer interest on amounts not paid within the credit period specified by Horticultural & Landscape Supplies at a rate of 10% per annum from the due date until the payment of the debt.

If any of the events set out in (i) to (v) below occur, Horticultural & Landscape Supplies may at its option withhold further deliveries or cancel the Contract without notice to the Buyer and without prejudice to any other action or remedy which Horticultural & Landscape Supplies has or might otherwise have had, and all monies owing and outstanding to Horticultural & Landscape Supplies on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:

(i) the Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;

(ii) the Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets;

(iii) the Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;

(iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer;

(v) the Buyer experiences any analogous events having substantially similar effects to any of the events specified above.

(b) Notwithstanding sub-clause 11(a) hereof Horticultural & Landscape Supplies may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Horticultural & Landscape Supplies shall be final and accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.

#### **12. Transactions:**

The Customer will be liable for all transactions and expenses involving the Customer's credit account including any fraudulent use of the account by the Customer or any person authorised by the Customer to use the account or the Customer's employees, agents or contractors. The Customer will also be liable for any fraudulent use of the Customer's credit account which is directly or indirectly caused or contributed to by the Customer's negligence.

**13. Application of Moneys Received:** If Horticultural & Landscape Supplies receives or recovers money in respect of a debt of the Customer, Horticultural & Landscape Supplies may use the money to pay off whichever debt or part of a debt Horticultural & Landscape Supplies chooses and is not compelled to apply the money as directed by the Customer or any other person.

**14. Indemnity:** The Customer will indemnify Horticultural & Landscape Supplies in relation to any direct or indirect loss, liability or damage suffered by Horticultural & Landscape Supplies or any other person as a result of the Customer's negligence or breach of these Credit Terms.

**15. Trusts:** These Credit Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.

**16. Joint and Several:** If the Customer consists of more than one person, the obligations of each person are joint and several.

**17. Severance:** Each clause, subclause and part of these Credit Terms is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

#### **18. LAWFUL USE OF THE GOODS**

(a) The Buyer undertakes with Horticultural & Landscape Supplies:

(i) that it will acquaint itself with the requirements of all relevant Government and Statutory or other authorities, bodies or corporations relating to the Goods and to the application to which the Goods are put;

(ii) that at all times whilst the Goods are in the Buyer's possession or under its control it will comply with such requirements;

(iii) that it will procure that any Buyer of the Goods from them will also acquaint themselves with and comply with such requirements;

(iv) that it will indemnify Horticultural & Landscape Supplies against any liability resulting from a breach of such requirements.

(b) The Buyer undertakes that it will comply with Horticultural & Landscape Supplies safety instructions as notified from time to time by Horticultural & Landscape Supplies relating to the Goods.

#### **19. PALLETS**

Unless otherwise agreed to in writing all pallets on which Goods are delivered remain the property of Horticultural & Landscape Supplies and must be returned at the Buyer's expense in good order and condition to the store of Horticultural & Landscape Supplies from which they were delivered. Pallets will be deemed to be still in the Buyer's hands until received at such store. To the extent the law permits, all risks whatsoever associated with the pallets rest with the Buyer absolutely and the Buyer agrees to indemnify Horticultural & Landscape Supplies in respect of any pallet that is not returned in good order and condition to Horticultural & Landscape Supplies within one month of delivery of the Goods and Horticultural and Landscape Supplies reserves the right to levy a charge on the customer account in respect of pallets outstanding for greater than one month.

#### **20. GENERAL LIEN**

(a) In addition to any right of lien to which Horticultural & Landscape Supplies may be entitled under the common law, Horticultural & Landscape Supplies shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by Horticultural & Landscape Supplies to the Buyer. Horticultural & Landscape Supplies may in its sole discretion sell any item that is subject to the said lien, provided that Horticultural & Landscape Supplies shall pay to the Buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to Horticultural & Landscape Supplies in respect of Goods that have been delivered by it to the Buyer and all reasonable costs of sale incurred by Horticultural & Landscape Supplies.

(b) The Buyer acknowledges that Horticultural & Landscape Supplies has a security interest (for the purposes of the PPSA) in these items, and the proceeds of these items, until the Buyer has paid in full for all Goods supplied by Horticultural & Landscape Supplies in accordance with this clause 15. The Buyer will do anything required by Horticultural & Landscape Supplies to enable Horticultural & Landscape Supplies to register this security interest, with the priority Horticultural & Landscape Supplies requires, and maintaining that registration. Despite this requirement for registration of this security interest, and regardless of whether or not it is actually registered, Horticultural & Landscape Supplies may perfect this security interest by possession of the relevant items.

#### **21. SEVERANCE**

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

#### **22. Application of Laws:**

These Credit Terms are governed by the laws of the state as determined by Horticultural & Landscape Supplies in its sole discretion. The Customer submits to and consents to the laws of the state (as determined by Horticultural & Landscape Supplies in its sole discretion) having jurisdiction over these Credit Terms.

#### **23. TRANSACTION TAX**

Where a transaction tax, including a goods and services tax ("GST") and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under these terms and conditions, Horticultural & Landscape Supplies may recover from the Buyer an additional amount on account of that transaction tax in accordance with clause 10.

#### **24. PATENTS**

No right or licence is granted to the Buyer under any patent, copyright, registered design or other industrial property right except the right to resell to Goods.

#### **25. SET-OFF**

Horticultural & Landscape Supplies may at any time set-off amounts owed by Horticultural & Landscape Supplies to the Customer against amounts owed by the Customer to Horticultural & Landscape Supplies.

#### **26. CONFIDENTIALITY**

(a) Except as required by law, the Contract and subject to the PPSA, Horticultural & Landscape Supplies and the Buyer agree to treat the terms of the Contract as confidential.

(b) Horticultural & Landscape Supplies and the Buyer acknowledge and agree that sub-clauses 21(a) and (b) and this sub-clause 21(c) constitute a confidentiality agreement pursuant to Section 275(6) of the PPSA.

(c) Neither Horticultural & Landscape Supplies nor the Buyer will disclose, send or make available any of the information referred to in Section 275(1) of the PPSA to any person except as required by law, the Contract and subject to the PPSA.