

## TERMS & CONDITIONS OF SALE

### 1. INTERPRETATION

Unless otherwise inconsistent with the context the word “person” shall include corporation, “Company” shall mean Australian Plantroom Services Sydney and its agents, servants and employees and any of its subsidiaries as defined in Section 7 of The Companies Acts & Codes (if such subsidiary is named as the party making or accepting the order -)and shall include such other entity or entities as Australian Plantroom Services Sydney shall nominate in writing , “confidential information” shall include all plans, quotes, reports and such other documents and things as the Company may nominate “goods” shall include services and “Purchaser” shall mean and include the person to whom any quotation is made and shall include an person offering to contract with the Company on these terms and conditions. Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.

### 2. OFFER AND ACCEPTANCE

Any quotation made by the Company is not an offer to sell or to provide services and no order given in pursuance of any quotation shall bind the company until accepted by it in writing or by the commencement of supply or the provision of services. Unless otherwise agreed in writing all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's order and these terms and conditions shall be deemed to be incorporated in any agreement between the Company and the Purchaser. Any terms and conditions contained in any order offer acceptance of other document of the Purchaser and all representations statement terms conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.

### 3. LIMITATION OF LIABILITY

Insofar as goods or services supplied by the Company are not of a kind ordinarily acquired for personal, domestic or household use or consumption and unless the Purchaser establishes that reliance provision would not be fair and reasonable, the liability for breach of a condition or warranty implied into this contract by the Trade Practices Act 1974 (other than a condition implied by section 69) is limited:

- a) in the case of goods to any one of the following as determined by the company:
  - (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the repair of the goods; or
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having goods repaired;
- b) in the case of services to any one of the following as determined by the Company:
  - (i) the supplying of the services again, or
  - (ii) the payment of the cost of having the services supplied again.

### 4. DELIVERY

- a) Any date quoted for delivery is an estimate only and unless a guarantee shall have been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date the Company shall not be liable to the Purchaser for any loss or damage howsoever arising even if arising out of the negligence of the Company for failure to deliver on or before the quoted date. Written advice to the Purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- b) Subject to the provisions of Section 74 of the Trade Practices Act 1974 and to the warranties therein implied that services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied, the Company shall not be liable to any Purchaser or other party for any direct or indirect or consequential injury, loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of the Company or any other party, strike or any other industrial action be it of the Company or other party, or any other cause whatsoever.
- c) The Company reserves the right to deliver by instalments. If delivery is made by instalments the Purchaser shall not be entitled:
  - (i) to terminate or cancel the contract; or
  - (ii) to any loss or damage howsoever arising for failure by the Company to delivery any instalments on or before the quoted date.
- d) It is agreed that the Company shall not be responsible for delay in manufacture or delivery caused by, or in any way incidental to an act of God, war, fires, breakages of machinery or strikes or arising out of any other unexpected or exceptional cause, or any cause beyond the Company's reasonable control.
- e) Any quotation containing a provision to supply goods “ex stock” is subject to fulfilment of prior orders at the date of receipt of the Purchaser's order.

### 5. CANCELLATION

Subject to Section 75A of the Trade Practices Act 1974 and without limiting the entitlement of a consumer to rescind a contract as provided in that section, any order may be cancelled, varied or suspended only with the written consent of the Company and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify the Company for any costs expenses or charges incurred by the Company in preparation for and in the execution of an order which, without limiting the generality thereof, shall include an amount equal to 50 per centum of the net profits to the Company of the order had the order not been cancelled, varied or suspended.

### 6. QUANTITIES

No claim for shortage of delivery or shortfall or excess in capacity or performance of less than ten per cent of that ordered will be made by the Purchaser and in event shall not exceed the invoiced unit price of the goods in respect of which the claim is made. Excess delivery of up to ten per cent of quantities ordered will be accepted by the Purchaser and payment made for such excess quantities. This condition 5 does not apply when the Purchaser is a Consumer for the purposes of the Trade Practices Act 1974.

### 7. DESCRIPTION AND SPECIFICATIONS

- a) Whilst every effort is made to ensure their accuracy, the descriptions, illustrations and material contained in any catalogue, price list or brochure, leaflet or other descriptive matter provided by or on behalf of the Company represent the general nature only of the items described therein and save where the Company has accepted an order for goods specified as so described or illustrated, shall not form any part of any order or agreement or amount to any representation or warranty and, save as aforesaid, the use of such a description or illustration shall not constitute a contract of sale by description. The Company reserves the right to modify the design of goods without notice.

- b) The Purchaser warrants that any goods manufactured, constructed or supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any letters patent or registered designs. The Purchaser shall indemnify and keep indemnified and hold harmless the Company against any action, loss, cost, claim or damage that may be brought against or suffered by the Company of any breach of this warranty by the Purchaser.
- c) The Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the Purchaser that any goods manufactured, constructed or supplied by the Company which are based upon any designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgement of the Company for the fitness for any purposes of any goods so manufactured, constructed or supplied.

#### **8. ACCESS**

In respect of any work done on the Purchasers premises or elsewhere other than at the Company's premises it shall, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances shall be suitable to the Company failing which the Company shall be entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.

#### **9. MINIMUM CHARGE**

The Company reserves the right to increase the amount charged on any invoice up to the minimum charge as established by the Company at the date of the invoice.

#### **10. WAIVER**

Failure by the Company to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which the Company may have and shall not, and nor shall any express waiver, be deemed to be a waiver of any subsequent breach of any term or condition.

#### **11. WARRANTY AND LIMITATION ON DAMAGES**

- a) Except when the Purchaser is a Consumer for the purposes of the Trade Practices Act 1974 and the conditions warranties and rights implied by that statute cannot be excluded and subject always thereto, representations, promises, statements, warranties and conditions [whether (subject as aforesaid) statutory express or implied] regarding any goods or services supplied by or on behalf of the Company are expressly excluded. The Company shall not be liable for any loss or damage whatsoever and howsoever arising whether direct, indirect or consequential or in respect of any claim whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with the Company or occasioned to the Purchaser or any third or other party or to his or their property or interest and whether or not due to the negligence of the Company its servants or agents.
- b) As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the purchaser, the Purchaser shall within fourteen days notify the Company in writing of the same.
- c) The Company's liability shall be limited in all circumstances to the repair or replacement or monetary compensation at the option of the Company of any good manufactured by it which are returned only upon the written authority of the Company.
- d) The Company shall not be liable in any circumstance for any:
  - (i) defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, unsuitable lubricant, improper installation, repair or alteration (other than by the Company) or accident;
  - (ii) any transport, installation, removal, labour or other costs;
  - (iii) goods not manufactured by it but the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the Purchaser and the benefit of any claim made by the Company and accepted by the manufacturer of such goods under a warranty given by the manufacturer provided that nothing contained in this subparagraph shall limit the rights of the Purchaser to proceed against the Company pursuant to the Trade Practices Act 1974;
  - (iv) technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the manufacture construction or supply of goods for or to the Purchaser provided always that the Company has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

#### **12. CONTAINERS**

Containers (which expression shall include but shall not be limited to, stillages, formers and pallets) in or on which goods are delivered and for which a deposit charge is made, remain the property of the Company. On the containers returned in good order and condition the deposit will be returned to the Purchaser. The deposit for containers which the Purchaser returns otherwise than in good order and condition shall only be refunded in part having regard to their actual condition. Containers will be deemed to be not returned by the Purchaser until received into the Company's stores.

#### **13. INSOLVENCY & DEFAULT**

If

- a) the Purchaser makes default in any payment due hereunder;
- b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;
- c) a receiver or a receiver and manager is appointed of the property or any part of the property of the Purchaser;
- d) the Purchaser makes or proposes to make any arrangement with its Creditors;
- e) the Purchaser is placed under official management;
- f) execution is levied upon the assets of the Purchaser for an amount in excess of \$1,000.00 and is not within seven days satisfied, then, and in any such event the Company may at its option withhold further deliveries or cancel the contract without prejudice to its rights hereunder PROVIDED HOWEVER that the Company may at any time and from time to time upon such terms as it may determine to waive any of its rights under this Clause, but without prejudice to its rights thereafter to rely upon the happening thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

#### 14. TITLE AND ACCESS

- a) Title of the goods shall not pass to the Purchaser until the payment in full for all goods is made.
- b) The Purchaser acknowledges that until full payment is made for all goods, the Purchaser holds the goods as bailee of the Company and owes a duty to the Company in respect of the goods on the same terms and conditions as if the Purchaser was a bailee for reward.
- c) Until payment is made for all goods, the Purchaser shall store the goods separately and in such a manner that they are clearly identified as the property of the Company.
- d) The Purchaser acknowledges that if it sells any of the Company's goods, it sells the goods as fiduciary agent of the Company provided that sales shall not give rise to any obligations on the part of the Company.
- e) The Purchaser acknowledges that if it sells any of the Company's goods prior to making full payment for all goods the Purchaser shall hold the proceeds of sale on trust for the Company and shall hold the proceeds in a separate account.
- f) The Company may enter, by its employees or agents, on any premises where the Goods are situated, or where the Company reasonably believes the Goods to be situated, and retake possession of the Goods until such time as the Purchase Price or associated charges for them and any other monies payable by the Purchaser to the Company under the terms of this or any other agreement have been paid in full or if the Purchaser becomes or resolves to become subject to any form of insolvency or administration. The Company may for the purpose of recovery of the Goods enter by its employees or agents on the Site and any other premises where the goods are stored or where they are reasonably thought to be stored, and may repossess the Goods. This permission is irrevocable and the Purchaser acknowledges that the company's employees or agents so entering are not trespassing. The Purchaser further agrees to do all such things and sign all such documents as may be required to enable the Company to enter the site or other premises where the goods are stored. The Purchaser's permission to enter the Site or other premises under this clause is irrevocable and the Purchaser agrees that the Company's employees or agents may enter the Site and those premises at any reasonable time after default of payment by the Purchaser or before default if the Company believes a default is likely.

#### 15. INSURANCE

In the event that the goods are covered by insurance taken out by the Company, the Company will only be liable to the extent of any of the indemnity provided.

#### 16. RISK

Unless otherwise agreed in writing all goods shall be at the Purchaser's risk upon delivery to the Purchaser, his carrier or agent.

#### 17. PAYMENT

- a) Unless otherwise agreed in writing, payment terms are nett cash 30 days from the end of the month in which the goods are delivered to the Purchaser, his carrier or agent. Payment for services or labour provided by the Company to the customer shall be paid within 30 days of the date of sending of invoice for such services or labour.
- b) If the Company does not receive full instructions sufficient to enable to despatch the goods within 14 days of notification that such goods are ready, the Purchaser shall be deemed to have taken delivery of the goods and the terms of payment shall apply from such date; in this event, the Purchaser shall also be liable for storage charges payable monthly on demand, storage being of the Purchaser's risk.
- c) The part of the payment due is to be held by the customer by way of retention sum, such retention sums shall be in the form of a banker's guarantee.
- d) The Company shall be entitled to impose an interest of 1.5% per month on any payment on any amount that is overdue pursuant to this condition.
- e) Unless otherwise agreed in writing, the Company shall reserve the right to apply for progress claims within the duration of the contract. Such progress claims shall be due for payment 30 days from the end of the month in which the progress claims have been submitted.

#### 18. PRICE

- a) Unless otherwise expressly agreed in writing the price of the goods shall be that price charged by the Company at the date of delivery plus the amount which the Company is required to pay on account of any excise, or sales taxes or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the goods or any part thereof, or the manufacture, use, sale of or delivery thereof.
- b) Unless otherwise specified any prices quoted do not include transportation costs. Goods shall be supplied ex works.
- c) The prices quoted are based on present day cost of labour and materials and will be subject to contract price adjustments at the option of the Company.

#### 19. ARBITRATION

Should a dispute arise, the parties may elect to refer the matter to the Alternate Dispute Resolution Tribunal or the President of Institution of Engineers Australia for referral.

#### 20. CONFIDENTIALITY

The parties agree that confidential information exists and may come into existence as a consequence of this agreement acknowledges and agree that:

- a) Confidential information is secret and confidential;
- b) Unless the contractor agrees to the contrary, all information provided by the contractor shall be deemed to facilitate the performance by the consultant of its obligations under this agreement;
- c) Each party must not without the written consent of the other party:
  - i) use any confidential information of the other party or the other party's customers, except in performing its obligations under this agreement; or
  - ii) disclose any Confidential Information of the other party or the other party's customers to any person except the Customer's approved employees and subcontractors and then only to those who need to know the same and who agree to be bound by these obligations of confidentiality.

Each party will ensure that its employees, agents, contractors and advisers are aware of and comply with the obligations imposed by this clause. These obligations of confidentiality survive expiry or termination of this Agreement.

**21. GUARANTEE**

Any office bearer, director of a company, shareholder or proprietor of the customer who accepts and enters into this agreement acknowledges and warrants that he/she/they also do so in their personal capacity and as guarantor and agrees to execute/sign the attached Deed of Guarantee.

**FORM OF GUARANTEE**

**THIS DEED OF GUARANTEE MADE THE.....DAY OF.....20**

- (a) The company has entered into this agreement at the request of ..... (the "Guarantor") which expression shall be constructed as to apply to and bind each of the said persons (both jointly and severally) and upon the condition that the Guarantor shall execute this agreement as their deed by way of guarantee of the performances by the customer of its obligations hereunder.
- (b) The guarantor guarantees the due and punctual performance by the customer of the whole of its obligations present and future under this agreement and the due and punctual payment by the customer of all moneys to become due hereunder AND the Guarantor agrees that this guarantee shall be a principal obligation and shall not be affected by any postponement variation, invalidity illegality irrevocability or unenforceability of the customers aforesaid liabilities or any part thereof or by the company obtaining any further or other covenant security or guarantee in respect of the customer's aforesaid liabilities AND agrees that the company shall be at liberty without notice to the guarantor and without discharging or in any way affecting the liability of the Guarantor hereunder to grant time or any form of indulgence or waiver to or to make any agreements composition release or other arrangement with the customer AND that this guarantee shall be a continuing guarantee and shall be binding notwithstanding the insolvency or winding-up or any charge in the constitution of the customer or the bankruptcy or insolvency of any of the Guarantor and shall be applicable, to the whole debt or damages ultimately due to the vendor from the customer AND that it shall not be necessary for the Guarantor to consent to or be made aware of any transaction between the vendor and the customer or to be advised of the occurrence of any circumstance of default by the customer under this agreement AND in the event of a claim that any payment made by the customer or the Guarantor or by any other person on account of any of them in respect of the moneys the subject of this Guarantee is void under law relating to bankruptcy or the protection of creditors being upheld conceded or compromised the vendor shall forthwith become entitled against the Guarantor to all such rights in respect of the said moneys as it would have had if the payment of so much thereof as is held or conceded to be void or as is forgone on compromise had not taken place AND the Guarantor's liability shall extend to all costs and expenses whatsoever without the necessity of taxation

.....  
Executed as a Deed by the Guarantor

.....  
Executed as a Deed for and on behalf of the company by its Director/Secretary who warrants he/she has the Authority to enter into the Deed