

**TERMS & CONDITIONS OF TRADE****1. DEFINITIONS**

- 1.1 "Te Hana Nurseries" shall mean Te Hana Nurseries Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Te Hana Nurseries.
- 1.3 "Stock" shall mean:
- 1.3.1 all Stock of the general description specified on the form of this agreement and supplied by Te Hana Nurseries to the Customer; and
- 1.3.2 all Stock supplied by Te Hana Nurseries to the Customer; and
- 1.3.3 all inventory of the Customer that is supplied by Te Hana Nurseries; and
- 1.3.4 all Stock supplied by Te Hana Nurseries and further identified in any invoice issued by Te Hana Nurseries to the Customer, which invoices are deemed to be incorporated into the form part of this agreement; and
- 1.3.5 all Stock that are marked as having been supplied by Te Hana Nurseries of that are stored by the Customer in a manner that enable them to be identified as having been supplied by Te Hana Nurseries; and
- 1.3.6 all of the Customer's present and after-acquired Stock that Te Hana Nurseries has performed work on or to in which Stock or materials supplied or financed by Te Hana Nurseries have been attached or incorporated
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Stock" shall also mean all stock, goods, products, services and advice provided by Te Hana Nurseries to the Customer and shall include without limitation the supply of trees, plants, shrubs and any fee or charge associated with the supply of Stock by Te Hana Nurseries to the Customer.
- 1.5 "Price" shall mean the cost of the Stock as agreed between Te Hana Nurseries and the Customer and includes all disbursements eg charges Te Hana Nurseries and the Customer and includes all disbursements eg charges Te Hana Nurseries pay to others on the Customer's behalf subject to clause 4 of this contract.

**2. ACCEPTANCE**

- 2.1 Any instructions received by Te Hana Nurseries from the Customer for the supply of Stock shall constitute a binding contract and acceptance of the terms and conditions contained herein.

**3. COLLECTION AND USE OF INFORMATION**

- 3.1 The Customer authorises Te Hana Nurseries to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Stock provided by Te Hana Nurseries to any other party.
- 3.2 The Customer authorises Te Hana Nurseries to disclose any information obtained to any person for the purposes set out in clause 3.1
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

**4. PRICE**

- 4.1 Where no price is stated in writing or agreed orally the Stock shall be deemed to be sold at the current amount as such Stock are sold by Te Hana Nurseries between the date of the contract and delivery of the stock
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Stock that is beyond the control of Te Hana Nurseries between the date of the contract and delivery of the Stock.

**5. PAYMENT**

- 5.1 Payment for Stock shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Te Hana Nurseries in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

**6. QUOTATION AND RESERVES**

- 6.1 Any quotation by Te Hana Nurseries to the Customer does not constitute an offer and Te Hana Nurseries reserves the right to withdraw or amend the quote at any time prior to acceptance of the Customer's order.
- 6.2 Stock may be reserved by the Customer upon payment of a non-refundable 20% deposit. Mature stock upon purchase attracts a storage and maintenance charge.

**7. RISK**

- 7.1 All Stock are despatched uninsured and area at the Customer's risk at all times.
- 7.2 No claim for damage or loss of Stock in transit will be accepted by Te Hana Nurseries. All such claims should be made direct to the carrier.

**8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)**

- 8.1 Title in any Stock supplied by Te Hana Nurseries passes to the Customer only when the Customer has made payment in full for all Stock provided by Te Hana Nurseries and of all other sums due to Te Hana Nurseries the Customer have been paid in full, Te Hana Nurseries has a security interest in all Stock.
- 8.2 If the Stock are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assemble process by the Customer or any third party, title in the Stock shall remain with Te Hana Nurseries until the Customer has made payment for all Stock, and where those Stock are mixed with other property so as to be part of or a constituent of any new Stock, title to these new Stock shall be assigned to Te Hana Nurseries as security for the full satisfaction by the Customer of the full amount owing between Te Hana Nurseries and Customer.

- 8.3 The Customer gives irrevocable authority to Te Hana Nurseries to enter any premises occupied by the Customer or on which Stock are situated at any reasonable time after default by the Customer or before default if Te Hana Nurseries believes a default is likely and to remove and repossess any Stock and any other property to which Stock are attached or in which Stock are incorporated. Te Hana Nurseries shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Hana Nurseries may either sell any repossessed Stock and credit the Customer/ account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Stock and credit the Customer's account with the invoice value thereof less such sum as Te Hana Nurseries reasonable determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs

- 8.4 Where stock are retained by Te Hana Nurseries pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.

- 8.5 The following shall constitute defaults by the Customer:

- 8.5.1 Non payment of any sum by the due date.
- 8.5.2 The Customer intimates that it will not pay any sum by the due date.
- 8.5.3 Any Stock are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Stock.
- 8.5.4 Any Stock in possession of the Customer are materially damaged while any sum due from the Customer to Te Hana Nurseries remains unpaid.
- 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord detains against any of the Customer's assets. A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days. Any material adverse change in the financial position of the Customer.
- 8.5.6
- 8.5.7

**9. DISPUTES**

- 9.1 Any claims must be lodged within seven (7) days of dispatch, otherwise Stock and their quality are deemed to have been accepted.
- 9.2 No Stock will be accepted for return without the prior consent of Te Hana Nurseries.

**10. LIABILITY**

- 10.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Te Hana Nurseries which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 10.2 Except as otherwise provided by clause 10.1 Te Hana Nurseries shall not be liable for:
- 10.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Stock by Te Hana Nurseries to the Customer including consequential loss whether suffered of incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Stock provided by Te Hana Nurseries to the Customer; and
- 10.2.2 The Customer shall indemnify Te Hana Nurseries against all claims and loss of any kind what so ever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Te Hana Nurseries or otherwise, brought by any person in connection with any matter, act, omission, or error by Te Hana Nurseries its agents or employees in connection with the Stock.

**11. WARRANTY**

- 11.1 Although great care is taken to have all stock true to label and description and of the highest quality. No warranty is expressed or implied. Te Hana Nurseries cannot be and are not responsible for future performance of any stock once despatched. The Customer is also liable for incorrect planting of stock.

**12. CONSUMER GUARANTEES ACT**

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Stock from Te Hana Nurseries for the purposes of a business in terms of section 2 and 43 of that Act

**13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

- 13.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Te Hana Nurseries agreeing to supply Stock and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Te Hana Nurseries the payment of any and all monies now or hereafter owed by the Customer to Te Hana Nurseries and indemnity Te Hana Nurseries against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

**14. MISCELLANEOUS**

- 14.1 Te Hana Nurseries shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 14.2 Failure by Te Hana Nurseries to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations TE Hana Nurseries has under this contract.
- 14.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**AN ORDER IS DEEMED AS ACCEPTANCE OF OUR TERMS OF TRADE**