

# WOODLEIGH NURSERY - TERMS AND CONDITIONS OF TRADE

By this Agreement dated .....20

BETWEEN: Woodleigh Nursery, ("Woodleigh")

AND:.....(the "Purchaser")

In these terms and conditions "Woodleigh" means Woodleigh Nursery being the supplier of goods to the purchaser named above (the "Purchaser"). Woodleigh supplies all goods to the Purchaser upon the terms and conditions set out herein, notwithstanding anything to the contrary that may be stated in the Purchaser's inquiries or on the Purchaser's orders or otherwise by the Purchaser. Without limiting the generality of the foregoing, the ordering of goods will be deemed to be acceptance by the Purchaser of these terms and conditions.

## Price

1. A deposit of up to 50% of the value of the goods may at the discretion of Woodleigh be required on the placing of any order. Any deposit received is non-refundable.
2. The Purchaser shall pay the price indicated on the invoice or other similar document issued by Woodleigh.
3. The Purchaser shall pay Goods and Services Tax as rendered by Woodleigh and any other taxes, duties and levies payable in respect of the supply of goods as at the date of Woodleigh's invoice.
4. The purchase price of goods may be different from the price quoted or the price current when the goods are ordered and, in this situation, Woodleigh may change its prices to the Purchaser without notice.
5. The Purchaser shall make all payments due to Woodleigh in full without any deductions whether by way of set-off, counterclaim, or any other equitable or legal claim.
6. The Purchaser acknowledges that the price of goods does not include the price of delivery.
7. Where trays are chargeable, a full credit for any trays returned in good condition will be given.

## Terms of Payment

8. The Purchaser shall pay all amounts due to Woodleigh on the due date. Unless otherwise agreed in writing by Woodleigh, the due date shall be the 20th of the month following the date of Woodleigh's invoice rendered for those goods. Payment shall not be deemed to have been received by Woodleigh until it is received at the office of Woodleigh or credited to Woodleigh's bank account at New Plymouth.
9. Provided that the Purchaser is in default, the Purchaser shall upon demand by Woodleigh pay to Woodleigh interest at the rate of 4% per annum in respect of all of the Purchaser's indebtedness to Woodleigh. Such interest shall accrue on a daily basis from the date when payment is due until the date when payment is actually received. The Purchaser shall be liable to pay all expenses and legal costs of Woodleigh relating to or having any connection with Woodleigh obtaining or seeking to obtain a remedy of the Purchaser's default.
10. If the Purchaser is in default of any provision of this contract, Woodleigh shall be entitled to terminate this or any other contract with the Purchaser, without prejudice to its right to recover all sums owing to it in respect of goods already delivered. Upon termination of the contract, Woodleigh shall be entitled to dispose of the balance of the goods contracted for and the Purchaser shall indemnify Woodleigh for any loss in price incurred by it.
11. Where the Purchaser owes any amount to Woodleigh, Woodleigh shall be entitled, at its complete discretion, to accept any payment received and apply it towards satisfaction of any such indebtedness whether or not that payment relates to a specific invoice, costs, interest or other indebtedness.
12. Woodleigh shall be entitled to assign to any other person or company all or any part of the Purchaser's indebtedness to Woodleigh and the assignee shall be entitled to claim all or part of the indebtedness and shall have the same rights of recovery as Woodleigh.

## Delivery of Goods

13. Woodleigh will use reasonable endeavours to deliver on an agreed date, but such a date is not to be treated as a condition of sale.
14. The Purchaser acknowledges that any period or date quoted for delivery of the goods are approximate only. Woodleigh will use reasonable endeavours to comply with such period or date but accepts no responsibility for any loss, injury, damage or expense consequent upon the delay in delivery.
15. Unless the parties otherwise agree in writing, delivery shall be deemed to be effected upon the transfer of possession of goods to the Purchaser or the Purchaser's agents.
16. Woodleigh shall not be liable to the Purchaser or any other party for any loss sustained due to any delay in the supply or delivery of goods.
17. The cost of delivery shall be borne by the Purchaser.

## Risk and Title

18. Risk in goods supplied or to be supplied by Woodleigh, shall pass from Woodleigh to the Purchaser when the goods are delivered, when Woodleigh first makes an attempt to deliver if the Purchaser fails to accept goods, or on the date of a request by the Purchaser to delay delivery, or on the date that those goods are invoiced to the Purchaser whichever is the earlier.

19. Title in goods supplied or to be supplied by Woodleigh shall not pass to the Purchaser until all amounts owing by the Purchaser to Woodleigh in respect of those goods and all other goods supplied to the Purchaser by Woodleigh have been paid in full.
20. Until title passes from Woodleigh to the Purchaser in accordance with the preceding clause, where the Purchaser is in possession of the goods, the following terms shall apply:
  - (a) The Purchaser shall be deemed to be acting in a fiduciary capacity as bailee of Woodleigh in respect of any goods supplied by Woodleigh.
  - (b) The Purchaser shall if required by Woodleigh store the goods in such condition and place that it is clear that they are owned by Woodleigh.
  - (c) The Purchaser shall not under any circumstances mix the goods supplied by Woodleigh with other goods in any manner whatsoever; and
  - (d) If the Purchaser resells goods supplied to it before it has title to them, the Purchaser shall account to Woodleigh as Woodleigh's agent for the proceeds of such resale, but the Purchaser shall not represent to any person that the Purchaser is acting for Woodleigh or has any authority to bind Woodleigh.
21. Where Woodleigh exercises its rights under this Agreement in respect of the resale, repossession, or storage of the goods supplied, the Purchaser shall immediately indemnify Woodleigh for all costs incurred by Woodleigh in the exercise of those rights (including solicitor and own client legal costs).

## Products

22. Woodleigh reserves the right to alter product prices, specifications and availability at any time.
23. Every effort has been made to display correct product descriptions, specifications and prices; however, this could differ from goods supplied. All prices are subject to change and Woodleigh reserves the right to amend prices as deemed necessary.
24. Woodleigh does not guarantee that items listed are in stock. If an order is placed for an unavailable item Woodleigh will notify the Purchaser. If Woodleigh are unable to provide an item we will contact the Purchaser to discuss a possible replacement/substitute. It is the Purchaser's responsibility to ensure that any goods ordered are suitable for the Purchaser's requirements.
25. Woodleigh take the greatest care to ensure all seedlings are of merchantable quality and are true to named description, but any express or implied conditions, statement or warranty whether arising by statute or common law or otherwise as to merchantable quality or name or description are hereby excluded to the fullest extent permitted by law.
26. The parties acknowledge that while every effort is made to ensure clean and healthy nursery conditions are maintained, micro organisms may be present in goods.

## Cancellations

27. Subject only to any obligatory statutory rights, no cancellation, addition, deletion, amendment, or variation of any kind of or to any contract of supply between parties may be made except with the consent of Woodleigh in writing.
28. Acceptance of any returned goods will be at the absolute discretion of Woodleigh.
29. The parties agree that loss or damage to goods in transit is not the responsibility of Woodleigh and any claims for loss or damage are to be made to the carrier. Woodleigh accepts no responsibility for any damage that may occur after dispatch of goods.
30. It is the Purchaser's responsibility to inspect the goods on delivery and shall within seven (7) days of delivery notify Woodleigh of any alleged defect, shortage in quantity, damage or failure to comply with a description or quote.
31. Failure to notify Woodleigh within the prescribed timeframe will be deemed an acceptance of the goods free from defect or damage.

## Claims and limitation of Liability

32. Subject only to mandatory liability or guarantee imposed by statute and without prejudice to any rights granted thereby to the Purchaser:
  - (a) All warranties descriptions, representations, or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability or purpose, or otherwise, and all specific conditions, even though such conditions may be known to Woodleigh, are expressly excluded;
  - (b) Woodleigh shall not be liable in any way whatsoever to the Purchaser or any third party whether in tort (including negligence), contract or otherwise for any loss or damage whatsoever, whether direct, indirect, special or consequential and all such liability is expressly excluded; and
  - (c) The liability of Woodleigh in respect of any order of goods shall in any event be limited to the lesser of the purchase price of the goods complained of, the cost of replacing defective goods, or the actual loss or damage suffered by the Purchaser.
33. In addition to any statutory rights and remedies that the Purchaser may have, Woodleigh may at its complete discretion replace or give credit for all goods supplied and established to be defective, provided that the following conditions are met:

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- (a) All claims must be received by Woodleigh within (7) seven days of delivery of goods and where applicable the despatch number and or invoice number must be quoted by the Purchaser;
  - (b) All claims must specifically identify the defect and where possible in relation to goods be accompanied by the defective goods or a sample thereof; and
  - (c) Woodleigh shall have a reasonable opportunity to investigate the claim.
34. Where the Purchaser is acquiring from Woodleigh goods for resale or goods for the purposes of business, all supplies of goods to the Purchaser by Woodleigh shall be deemed to be made in trade for the purposes of the Purchaser's business (as that latter term is defined in the Consumer Guarantees Act 1993). As between Woodleigh and the Purchaser the guarantee provisions of the Consumer Guarantees Act 1993 are expressly excluded and shall not apply to any supplies of goods by Woodleigh to the Purchaser.

### **Non-waiver**

35. If at any time Woodleigh does not enforce any of these terms and conditions or grants the Purchaser time or other indulgence, Woodleigh shall not be construed as having waived that term or condition or its right to later enforce that or any other terms or conditions in this Agreement.

### **Severability**

36. Where any provision of these terms and conditions are rendered void, unenforceable, or otherwise ineffective by operation of law then that shall not affect the enforceability or effectiveness of any other provision in these terms and conditions.

### **Variation of Conditions**

37. These terms and conditions may only be varied by Woodleigh, in its absolute discretion and the only circumstances in which any variation to these terms and conditions will apply are where a duly authorized representative of Woodleigh has expressly agreed in writing to that variation.

### **Circumstances beyond Woodleigh's control**

38. Woodleigh shall not be liable for any failure to supply goods or meet any other obligation owed to the Purchaser where such failure results from or is influenced by fire, flood, industrial dispute, act of government (such as change in legislation, regulation, or order made under legislative authority) or other circumstances beyond Woodleigh's control.

Executed as a deed this \_\_\_\_\_ day of \_\_\_\_\_ 20

.....  
Signed by the Purchaser