

Barellan Nursery Pty Ltd ABN: 73 085 349 426 STANDARD TERMS AND CONDITIONS OF SALE
May 2010

1. DEFINITIONS

'Buyer', 'You', 'Your' means any person, body corporate, or other entity which purchases or orders the Goods from BN. 'Goods' means all containerized plants described in any invoice issued by BN to the Buyer and supplied, or to be supplied by BN to the Buyer. 'Guarantor' means that person, or persons, or entity who agrees to be liable for the debts of the Buyer on a principal debtor basis. 'We', 'Us', 'Our' or BN shall mean and refer to the supplier or seller of the goods- Barellan Nursery Pty Ltd ABN 73 085 349 426.

2. GENERAL APPLICATION

These terms and conditions of sale apply to and govern all orders placed with, and all contracts entered into by, BN in relation to the supply of Goods. These Conditions constitute the entire agreement between the Buyer and BN for the supply of Goods.

- 2.1 A contract for the sale of Goods by BN to the Buyer will be formed upon the acceptance by BN of a written order (acceptance of which need not be communicated to the Buyer to be effective) for the Goods by the Buyer ('Contract'). The Buyer acknowledges that it will be bound by these Standard Terms and Conditions.
- 2.2 Any quotation issued by BN is not to be construed as an offer or obligation by us to sell and we reserve the right at our option to accept or reject any orders received.
- 2.3 No terms stated by the Buyer in making an order and no waiver or alteration of the Conditions will be binding upon BN unless BN agrees in writing.

3. PRICE OF GOODS

- 3.1 Unless otherwise stated by BN in writing the purchase price for the Goods does not include the cost of delivery of Goods to the agreed destination specified by the Buyer and all costs, charges or expenses incurred by BN in relation to delivery are payable by the Buyer.
- 3.2 If the prices quoted by BN for the supply of Goods exclude goods and services tax (GST) then the Buyer must also pay to BN an additional amount in respect of GST imposed on BN calculated by multiplying the price by the prevailing GST rate.
- 3.3 Any additions or increases in the cost of the supply of Goods as a result of any additions or increases in charges, taxes (including the rate of GST) or costs associated with the manufacture or supply of Goods by BN between the date of BN's relevant quotation or, where there is no such quotation, from the date of BN's acceptance of the Buyer's order, as the case may be, and the date of supply of the Goods will be borne by the Buyer.

4. TERMS OF PAYMENT

- 4.1 BN will invoice the Buyer upon delivery of the Goods upon which payment will be made, unless you are an **Approved Credit Account Holder**.
- 4.2 Credit accounts are approved at the discretion of the Directors of BN upon completion by the applicant of a Credit Application Form. A signed application will be kept on file for all current accounts.
- 4.3 All Buyers (including Credit Account Holders) are required to pay upon delivery of goods for their first invoice.
- 4.4 A statement will be issued to the Approved Credit Account Holder once a month.
- 4.5 The Approved Credit Account Holder must pay the purchase price for the Goods, without deduction, within 30 days of the date of the relevant statement.
- 4.6 Payment will be made by cash or cheque, or bank cheque, or by direct debit or by way of credit card (plus a surcharge of up to 2.5% of the Price), or by any other method as agreed between BN and the Buyer.

5. DEFAULT

- 5.1 Interest on overdue invoices shall accrue from the date when payment becomes due until the date of payment, at the Cash Rate set by the Reserve Bank of Australia.
- 5.2 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be liable for any dishonour fees that BN incurs.
- 5.3 If any account remains overdue after thirty days then the amount of the greater of twenty dollars (\$20.00) or 10% of the amount overdue (to a maximum of \$200.00) shall be levied for administration fees and become immediately due and payable.
- 5.4 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify BN from and against all costs and disbursements incurred by BN in pursuing the debt, including legal costs.

6. DELIVERY

- 6.1 BN will deliver the Goods by:
 - 6.1.1 delivering the Goods to the address nominated in writing by the Buyer and agreed to by BN; or
 - 6.1.2 making the Goods available for collection by the buyer at BN's premises which will be deemed to be delivery.Where Goods are to be delivered to a nominated address BN will be deemed to have delivered Goods in accordance with the Contract if it obtains a receipt or signed delivery docket for the Goods from any person at that address.
- 6.2 In no event will BN incur any liability due to any failure on its part to supply Goods by an agreed date or time.
- 6.3 BN reserves the right to withhold deliveries if the terms of payment for any Goods are not strictly adhered to by the Buyer.
- 6.4 Unless otherwise agreed in writing the Buyer shall take delivery of the goods at BN's address as notified to the Buyer or set out in the contract documents. The cost of transport to the Buyer's premises or other address shall be borne by the Buyer and BN will not be responsible for any loss or damage of the goods after delivery thereof to the Buyer's carrier notwithstanding that BN may have arranged the carrier at the Buyer's request.
- 6.5 If BN retains ownership of the Goods, nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.6 If any of the Goods are damaged or destroyed following delivery but before ownership passes to the Buyer, BN is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by BN is sufficient evidence of BN's rights to receive the insurance proceeds without the need for any person dealing with the Buyer to make further enquiries.

7. TITLE

Title (equitable and legal) in the goods shall not pass to the Buyer until the Price and any other monies owing have been paid in full. While BN retains full legal and equitable title in the Goods pursuant to this clause:

- 7.1 The Buyer shall not bail, pledge, mortgage, charge, grant a lien over, lease or assign the Goods or grant any other security over them;
- 7.2 BN shall if the Buyer has defaulted in paying the Price, have the right to enter the Premises where the Goods are stored and take possession of the Goods;
- 7.3 BN authorizes the Buyer to sell the Goods as the BN's agent for the account only of BN. Proceeds of the sale are the property of BN and the Buyer will hold such proceeds for or on behalf of BN in a fiduciary capacity.

- 7.4 The Buyer shall notify BN in writing of any intended sale of the Buyer's business which includes or purports to include Goods not paid for as part of the Buyer's stock in trade; and
- 7.5 The Buyer shall store the Goods separately so as to identify the Goods the property of BN and insure the Goods the property of the BN for their full replacement value.

8. SECURITY AND CHARGE

Despite anything to the contrary contained herein or any other rights that BN may have:

- 8.1 Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and Guarantor agree to mortgage and/or charge all of their joint and/or several interest in said land, realty or any other asset to BN or BN's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or Guarantor acknowledge and agree that that BN (or BN's nominee) shall be entitled to lodge where appropriate a caveat, which shall be withdrawn once all payments and other monetary obligations payable have been met.
- 8.2 Should BN elect to proceed in any manner in accordance with this Clause and or its sub-clauses, the Buyer and/or Guarantor shall indemnify BN from and against all BN's costs and disbursements including legal fees on a solicitor own client basis.
- 8.3 The Buyer and/or Guarantor agree to irrevocably nominate, constitute and appoint BN or BN's nominee as the Buyer's and/or Guarantor's lawful attorney to perform all necessary acts to give effect to the provisions of this Clause.

9. WARRANTY AND LIABILITY

- 9.1 To the fullest extent permitted by law:
 - 9.1.1 No claim in relation to defective Goods may be made unless such a claim is made by the Buyer to BN within **24 hours of delivery** of the Goods to the Buyer;
 - 9.1.2 BN will not be liable for any claim whatsoever in respect of the Goods unless made in writing and photographic proof is provided of the Goods.
- 9.2 The Buyer acknowledges that it relies on its own skill and judgment in relation to Goods supplied to it by BN and BN will be under no liability for any unsuitability of the Goods for any purpose irrespective of any knowledge which it may possess as to the purpose for which the Goods were required by the Buyer unless:
 - 9.2.1 that purpose has been specifically notified to BN in writing prior to the formation of the relevant Contract; and
 - 9.2.2 BN has provided to the Buyer written confirmation executed by a technical manager of BN of the suitability of the Goods for the purpose notified by the buyer.
- 9.3 BN will not be liable to the Buyer, its servants, agents or contractors, for any damages of any nature or any claim whatsoever arising directly or indirectly out of or in any way attributable to the failure of the Buyer to care for the plants in a manner that meets nursery industry standards.
- 9.4 The liability of BN pursuant to any provision of relevant legislation of Australia or any State or Territory or pursuant to any other potential liability, whether arising from negligence or not, including any consequential loss which the Buyer may sustain or incur will be limited to one of the following at the election of BN:
 - 9.4.1 replacement of the Goods or supply of equivalent goods; or
 - 9.4.2 payment of the cost of replacing the Goods or acquiring equivalent goods.Where BN elects to replace the Goods under this clause BN will credit the cost of the Goods being replaced and will replace them as soon as possible with other goods of the same or equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original Goods were subject.
- 9.5 In all cases where goods are returned for replacement or credit the original invoice or delivery docket must be quoted and return freight must be paid by the customer
- 9.6 Notwithstanding any other provision of these Conditions, BN will not be liable to the Buyer, its servants, agents or contractors, for any indirect, incidental or consequential damages or losses of any nature whatsoever caused (whether based in tort or contract or otherwise) including any damage to property owned by the buyer or any other claim whatsoever, arising directly or indirectly out of or in any way attributable to the Goods, or their delivery or the performance of the Contract for the sale of the Goods upon these Conditions.
- 9.7 Subject to this clause 7 but notwithstanding any other provision of these Conditions or any other agreement, if any liability on the part of BN arises to or in favour of the Buyer (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of Goods by BN, BN's liability in all and any circumstances will be limited in aggregate to the payment by BN of a sum not exceeding 100% of the amount payable to BN pursuant to the relevant Contract.

10. TERMINATION

- Without prejudice to any of its other rights, powers or remedies, BN may cancel any order for the supply of Goods and terminate any Contract governed by these Conditions if:
- 10.1 the terms of payment for any Goods delivered to the Buyer by BN have not been strictly adhered to by the Buyer;
 - 10.2 the Buyer defaults under any of its obligations under these Conditions;
 - 10.3 the Buyer becomes insolvent, commits an act of bankruptcy or being a company, a receiver or receiver and manager or administrator is appointed, a mortgagee goes into possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up, is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors; and
 - 10.4 BN will be released from all liability under the Contract and BN will be entitled to payment for all Goods consigned up to the effective date of termination.

11. FORCE MAJEURE

Should BN be delayed, hindered or otherwise prevented from complying with these Conditions by reason of events or circumstances beyond the reasonable control of BN, including but not limited to Acts of wars, riots, strikes, lock-outs, trade disputes or labour disturbances, break down of plant or machinery, accident, storm, fire, flood, difficulties in obtaining materials, transport or labour or any other circumstances affecting the supply of Goods, then BN will not be liable to the Buyer for any loss or damage which may be suffered by the Buyer whether as a direct or indirect result of any such occurrences.

12. GOVERNING LAW

The conditions are to be governed by and interpreted in accordance with the laws of Queensland.