

**THE SPECIMEN TREE COMPANY LIMITED**  
**TERMS & CONDITIONS OF TRADE**

**1. DEFINITIONS**

- 1.1 "the Company" shall mean The Specimen Tree Company 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 Plants and Products and services from the Company.
- 1.3 "Plants and Products" shall mean:
- 1.3.1 all Plants and Products supplied by the Company to the Customer; and
- 1.3.2 all inventory of the Customer that is supplied by the Company; and
- 1.3.3 all Plants and Products supplied by the Company and further identified in any invoice issued by the Company to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.4 all Plants and Products that are marked as having been supplied by the Company or that are stored by the Customer in a manner that enables them to be identified as having been supplied by the Company; and
- 1.3.5 all of the Customer's present and after-acquired Plants and Products that the Company has performed work on or to or in which goods or materials supplied or financed by the Company have been attached or incorporated.
- 1.3.6 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Plants and Products" shall also mean all plants, products, goods, services and advice provided by the Company to the Customer and shall include without limitation the supply of trees, plants and associated horticultural and arboricultural products and all landscaping, tree services and advice and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Plants and Products by the Company to the Customer.
- 1.5 "Price" shall mean the cost of the Plants and Products as agreed between the Company and the Customer and includes all disbursements eg charges the Company pays to others on the Customer's behalf subject to clause 4 of this contract.

**2. ACCEPTANCE**

- 2.1 Any instructions received by the Company from the Customer for the supply of Plants and Products 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 the Company to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness or enforcing any rights under this contract.
- 3.2 The Customer authorises the Company 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 to orally the Plants and Products shall be deemed to be sold at the current amount as such Plants and Products are sold by the Company at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Plants and Products that is beyond the control of the Company between the date of the contract and delivery of the Plants and Products.
- 4.3 In circumstances where Plants and Products are required to be held by the Company for a period of time prior to the Customer acquiring them, a holding charge may be incurred by the Customer.

**5. PAYMENT**

- 5.1 Unless otherwise agreed payment for Plants and Products shall be made in full on or before the 20<sup>th</sup> 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 calculated on a daily basis.
- 5.3 Any expenses, disbursements and legal costs incurred by the Company 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. Any deposits received by the Company are non-refundable to the Customer.
- 5.6 Progress billing and the payment of these billings may be required where Plants and Products are supplied over more than one (1) calendar month. Progress billings are non-refundable.

**6. QUOTATION**

- 6.1 Where a quotation is given by the Company for Plants and Products:
- 6.1.1 Unless otherwise stated the quotation shall be valid for thirty (30) days from the date of issue; and
- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 The Company reserves the right to alter the quotation because of circumstances beyond its control such as the unavailability of Plants and Products quoted for.
- 6.2 Where Plants and Products are required in addition to the quotation the Customer agrees to pay for the additional cost of such Plants and Products.

**7. RISK**

- 7.1 Where the Customer arranges delivery of the Plants and Products, or delivery is arranged on behalf of the Customer by the Company, then the Plants and Products are at the Customer's risk immediately the Company gives possession of the Plants and Products directly to the Customer (or places them on the Customer's site) or possession of the Plants and Products is given to a carrier, courier, or other bailee for the purposes of transmission to the Customer.
- 7.2 The time agreed for delivery shall not be an essential term of this contract.

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

- 8.1 Title in any Plants and Products supplied by the Company passes to the Customer only when the Customer has made payment in full for all Plants and Products provided by the Company and of all other sums due to the Company by the Customer on any account whatsoever. Until all sums due to the Company by the Customer have been paid in full, the Company has a security interest in all Plants and Products.
- 8.2 If the Plants and Products are attached, fixed, or incorporated into any property of the Customer by the Customer or any third party, title in the Plants and Products shall remain with the Company until the Customer has made payment for all Plants and Products, and where those Plants and Products are mixed with other property so as to be part of or a constituent of any new Plants and Products, title to these new Plants and Products shall be assigned to the Company as security for the full satisfaction by the Customer of the full amount owing between the Company and Customer.
- 8.3 The Customer gives irrevocable authority to the Company to enter any premises occupied by the Customer or on which Plants and Products are situated at any reasonable time after default by the Customer or before default if the Company believes a default is likely and to remove and repossess any Plants and Products and any other property to which Plants and Products are attached or in which Plants and Products are incorporated. The Company 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, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. The Company may either resell any repossessed Plants and Products and

credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Plants and Products and credit the Customer's account with the invoice value thereof less such sum as the Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

- 8.4 Where Plants and Products are retained by the Company 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 Plants and Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Plants and Products.
- 8.5.4 Any Plants and Products in the possession of the Customer are materially damaged while any sum due from the Customer to the Company 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 distains against any of the Customer's assets.
- 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Customer.
- 8.6 If the Credit Repossession Act applies to any transaction between the Customer and the Company, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

**9. PAYMENT ALLOCATION**

- 9.1 The Company may in its discretion allocate any payment received from the Customer towards any invoice that the company determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment shall be deemed to be allocated in such manner as preserves the maximum value of the Company's purchase money security interest in Plants and Products.

**10. DISPUTES**

- 10.1 No claim relating to Plants and Products will be considered unless made:
- 10.1.1 Within two (2) days for plants supplied; and
- 10.1.2 Within seven (7) days for products and services supplied.
- 10.2 No returns accepted without prior approval.

**11. LIABILITY**

- 11.1 All Plants and Products are available for inspection by the Customer and it is acknowledged by the Customer that the Plants and Products are in a good and healthy condition at the time of purchase. If the Customer does not inspect the Plants and Products prior to purchase then the Customer is solely responsible for the Plants and Products purchased.
- 11.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Company which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Company, the Company 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.
- 11.3 Except as otherwise provided by clause 11.2 the Company shall not be liable for:
- 11.3.1 Any loss or damage of any kind whatsoever, arising from the supply of Plants and Products to the Customer by the Company, including consequential loss whether suffered or 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 Plants and Products provided by the Company to the Customer; and
- 11.3.2 The Customer shall indemnify the Company against all claims and loss of any kind whatsoever 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 the Company or otherwise, brought by any person in connection with any matter, act, omission, or error by the Company its agents or employees in connection with the Plants and Products.
- 11.4 If, contrary to the disclaimer of liability contained in these terms and conditions of trade, the Company is deemed to be liable to the Customer, following and arising from the supply of Plants and Products by it to the Customer, then it is agreed between the Company and the Customer that such liability is limited in its aggregate to the invoice value of the Plants and Products provided.
- 11.5 The Company is not liable for and takes no responsibility for Plants and Products held in its nursery on behalf of the Customer but will use its best endeavours to look after the Plants and Products while they are in its care.

**12. WARRANTY**

- 12.1 The Company takes the greatest care to have all plants sold by it, to the best of its knowledge, to be true to name and description, but gives no warranty express or implied as to description, growth, quality of productiveness, suitability for any purposes or tolerance to any conditions.

**13. CONSUMER GUARANTEES ACT**

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Plants and Products from the company for the purposes of a business in terms of section 2 and 43 of that Act.

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

- 14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for the Company agreeing to supply Plants and Products 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 the Company the payment of any and all monies now or hereafter owed by the Customer to the Company and indemnify the Company 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.

**15. SAMPLES**

- 15.1 The Customer agrees and accepts that Plants and Products may vary from the original sample shown.

**16. MISCELLANEOUS**

- 16.1 The Company shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control, such as extremes in weather, storm damage or disease.
- 16.2 Failure by the Company 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 the Company has under this contract.
- 16.3 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.
- 16.4 If the Customer defaults in payment then the Customer agrees that the amount of such default gives rise to a legal or equitable estate or interest in the Customer's land which will entitle the Company to enter a caveat against the Customer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.
- 16.5 The Company takes no responsibility for damage to driveways or footpaths where a company vehicle is requested or required to leave the road to facilitate the supply of Plants and Products.