

THE SPECIMEN TREE COMPANY LIMITED - TERMS AND CONDITIONS OF TRADE

1. **What is the purpose of this agreement?**
 - 1.1 This agreement sets out the terms that apply to the relationship between you (and "your") and **The Specimen Tree Company Limited** and its successors ("we", "us" and "our").
2. **What information about you can we collect?**
 - 2.1 You agree to provide us with and allow us to use all information necessary to give effect to this agreement, the provision of our products and performance of our services.
 - 2.2 Unless your consent is withdrawn in writing, you agree to the disclosure of information:
 - to give effect to the provision of our products and performance of our services;
 - to enforce our obligations under this agreement or an additional agreement;
 - when authorised by you or required by law;
 - to assess credit worthiness; and
 - to market any of our products and services.
 - 2.3 We will comply with the Privacy Act 1993. We will not use your information unless we have reasonably ensured it is accurate, complete, relevant and not misleading. If we give your information to another entity we will do everything reasonably within our power to prevent unauthorised use or disclosure of your information. You may access your information and ask us to correct any mistakes.
3. **What are our products and services?**
 - 3.1 "Product(s)" and "service(s)" means and includes without limitation:
 - plants, trees, horticultural and arboricultural items, mulch, compost, planter bags and fertiliser;
 - design, consultancy, tree surgery, tree removals, tree transplanting, horticulture and arboriculture related work, landscaping, plant and tree husbandry, maintenance, labour and delivery; and
 - agency fees, charges and out of pocket expenses incurred by us,identified in any document or electronic record issued by either party, all of which are deemed to be incorporated into and form part of this agreement, or as ours by marking or a manner of storage enabling identification.
 - 3.2 We may undertake aftercare maintenance of trees if agreed between the parties and as detailed on our quote. We will maintain the trees for the stated period from the date of planting/transplanting. Aftercare maintenance will include services such as watering, fertilising, formative pruning, stake adjustment and topping up mulch.
4. **What is the price?**
 - 4.1 The price is the cost of the products and services as agreed between you and us from time to time subject to GST and out of pocket expenses such as freight. If no price is stated, the price will be the amount at which that we provide the products and services at the time of your request. The price is subject to reasonable change due to circumstances beyond our control.
5. **What happens when we give you a quote?**
 - 5.1 If we give you a quote for products and services:
 - the quote will be valid for thirty (30) days, unless stated otherwise or withdrawn;
 - the quote will be exclusive of GST and delivery costs, unless stated otherwise;
 - you will be responsible for increased costs resulting from any subsequent changes to the quote due to any inadequate or inaccurate information, request/requirement for additional products and services or variations; and
 - we may alter the quote due to circumstances beyond our control or clerical or computer error.
6. **When and how do you pay us?**
 - 6.1 You agree to pay us in full:
 - for credit account holders – on or before the 20th day of the month following the date of our invoice;
 - for those without a credit account – within seven (7) days and prior to delivery of the products, unless stated otherwise;
 - interest on any amount you owe after the due date at 2.5% per month or part month;
 - a holding charge for products held by us after the delivery/pick up date;
 - if you wish to return a product, a restocking fee to the value of 15% of the product will apply;
 - expenses incurred as a result of enforcing any of our rights contained in this agreement including PPSR registration, debt collection and legal fees; and
 - without set-off, deduction, counterclaim or retention; and
 - a non-refundable deposit may be required.
 - 6.2 We may require progress payments and invoice by payment claims under the Construction Contracts Act 2002.
 - 6.3 You agree to us allocating or reallocating any payment received from you towards any invoice. If no allocation is made then it is deemed to be in such a way that preserves the maximum value of our purchase money security interest in the products.
 - 6.4 You will be responsible for payment if a third party that you expect to pay you or us fails to pay.
7. **What warranties apply?**
 - 7.1 Whilst we use our best endeavours to ensure that all plants that we sell are true to name and description to the best of our knowledge, we give no warranty as to description, growth, quality of productiveness, suitability for any purposes or tolerance to any conditions.
 - 7.2 Subject to any maintenance provided in accordance with 3.2, we provide no guarantee as to tree establishment due to the many variables that affect the same. This aligns with the parties' responsibility under 9.2.
 - 7.3 We are not liable whatsoever for damage to driveways or footpaths where our vehicle(s) is requested or required to leave the road to facilitate the supply of our products and services.
 - 7.4 Manufacturers' and third party warranties (where applicable).
 - 7.5 Samples shown to you may differ from products provided to you.
 - 7.6 If you are in trade and/or are a business, you agree that the parties contract out of the Fair Trading Act 1986 and Consumer Guarantees Act 1993 to the extent permissible by law.
 - 7.7 We are not liable for delay or failure to perform our obligations if the cause is beyond our reasonable control such as extreme weather, storm damage or disease.
 - 7.8 Subject to applicable insurance and 7.1-7.7, if we are deemed liable for loss or damage of any kind, however arising including from provision of products and services to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract tort or otherwise, our total liability is limited to the invoice value of products and services provided to you.
8. **What if you wish to make a claim in relation to our work or the products?**
 - 8.1 Special order products cannot be returned unless due to incorrect supply or fault/defect.
 - 8.2 Subject to 8.1 and inspection under 9.3, claims in relation to our products and services are subject to the following:
 - you notifying us within:
 - forty-eight (48) hours of pick up/delivery for trees/plants;
 - seven (7) days of pick up/delivery for products other than trees/plants; or
 - seven (7) days of completion of our services where the claim relates to services.
 - for products being returned for reason other than incorrect supply or under warranty, products being in the same saleable condition as provided to you and a restocking fee equal to 15% of the value of the products; and
 - the products having been used in accordance with the manufacturer's/our instructions and not having been subject to abuse, neglect, misuse, accident or work by a unauthorised third party.
9. **When will the products and services be provided?**
 - 9.1 Delivery is complete when we give the products to you, give the products to a third party carrier, or leave the products at the delivery address. The time of delivery is not an essential term of this agreement. We may partially deliver products listed in one order. If the parties agree on delivery by instalments and we fail to deliver an instalment, the failure will not give rise to a right of cancellation.
- 9.2 We are responsible for the products (and their health and condition) until delivery in accordance with 9.1 or the passing of ownership under 11.1, whichever comes first. We are not liable and take no responsibility for products held in our nursery on your behalf after ownership has passed, however we will use our best endeavours to care for and maintain the plants whilst we hold the same.
- 9.3 All products are available for your inspection prior to being picked up/delivered. By accepting the products, you acknowledge that any trees/plants are in good and healthy condition. If you do not inspect the products prior to pick up or on delivery, then you are solely responsible for the same.
10. **For what are you responsible?**
 - 10.1 You are responsible for ensuring that all:
 - sites subject to our products and services comply with all relevant health and safety regulations, requirements and law;
 - necessary resource consents from relevant local authorities have been obtained and you have informed us of any relevant information contained within the same;
 - plans on which we base our products and/or services are accurate and complete. We are not liable for variations and additions to our products and services where such is the result of inaccuracy or incompleteness and you will be responsible for the cost of additional products and services required to remedy any issues;
 - boundaries, covenants, utility services, underground services, cables, mains, pipes and pipelines, drains and inputs are identified, marked and easily visible prior to our services commencing;
 - sites are adequately secured to protect our products and equipment; and
 - sites subject to our products and services have a proper means of access, andif you do not meet these obligations adequately, any and all loss or damage is your sole responsibility.
 11. **What ownership and security rights do we have?**
 - 11.1 We retain ownership of and hold a security interest in all products until you have paid us in full for all products and services provided to you. While we retain ownership, you will store all products in such a way that our interests are protected and they can be identified as provided by us.
 - 11.2 You agree that we hold security interest in all of your present and after acquired property connected with products and services provided to you, and:
 - authorise us to register a financing statement and charge on the Personal Property Securities Register, and provide all information and signatures necessary to effect the same;
 - will not register a financing charge or statement or charge demand in respect of products without our prior written consent;
 - waive your entitlement under s 148 of the Personal Property Securities Act 1999 (PPSA) to receive a copy of a verification statement where we have registered our interest;
 - that both parties contract out of s 114(1)(a), 133 and 134 of the PPSA;
 - waive your rights as listed under s 107(2) of the PPSA; and
 - to give us seven (7) days prior written notice of any proposed change in your name or details such as contact information.
 - 11.3 If applicable, you agree that your failure to pay for the products and services by the due date gives rise to a legal or equitable estate or interest in your land on which the products and services were carried out and affixed and that the interest entitles us to register a caveat against your land.
 - 11.4 Where appropriate, we own the intellectual property rights connected to our products and services where the product of our work.
 12. **When can a party cancel this agreement?**
 - 12.1 Subject to 12.2-12.6, either party may cancel this agreement at any time by giving fourteen (14) days prior written notice.
 - 12.2 We have the right to suspend or stop wholly or in part the provision of products and services if we cannot complete the services due to unforeseen circumstances such as underground obstacles or where root balls fall apart during transplantation. Our liability is limited in accordance with 7, in particular 7.7.
 - 12.3 We have the right by seven (7) days prior written notice to suspend or cancel wholly or in part this or any agreement for the provision of products and services, including delivery, if you default by:
 - failing to pay or indicating you will not pay any sum owing by the due date;
 - any of your creditors seizing or indicating they will seize any products provided to you;
 - products in your possession becoming materially damaged while any amount remains unpaid;
 - being bankrupted, insolvent, under statutory management or put into liquidation;
 - a receiver being appointed over or a landlord possessing any of your assets;
 - a court judgment entered against you remaining unsatisfied for seven (7) days;
 - breaching the terms of this agreement; and
 - an adverse material change in your financial position.
 - 12.4 If you default we may exercise a lien against any products in our possession.
 - 12.5 You agree that if you default and the default is not remedied within seven (7) days, we may enter any premises occupied by you to inspect or retrieve any products and you will provide reasonable access to such premises. We may re-sell any products and credit the net sale proceeds to your account for the invoice value less adjustment for the condition of the products.
 - 12.6 Cancellation or suspension under 12.1, 12.2 or 12.3 will not affect either party's claim for any amount due at the time of cancellation or suspension, damages for any breach of obligations under this agreement and any other legal rights either party may have. Upon cancellation of this agreement any amount owed by you for products and services provided up to and including the date of cancellation will become immediately payable and current orders will terminate.
 13. **Does a personal guarantee apply?**
 - 13.1 If you are a director of a company or the trustee of a trust:
 - in exchange for us agreeing to supply products and services and/or grant credit to the company or the trust, you also sign this agreement in your personal capacity, and jointly and severally personally undertake as principal debtors, to pay everything that the company or trust owes us, and to indemnify us against non-payment and/or default; and
 - any personal liability of you as director or trustee will not exclude the company or trust from the liabilities and obligations contained in this agreement.
 14. **What else is agreed?**
 - 14.1 We may outsource (contract out) all or part of the work required to perform our services. You agree to pay for all amounts due in connection with the same.
 - 14.2 A failure by either party to enforce any of the terms of this agreement will not be deemed to be a waiver of any of the rights or obligations under this agreement.
 - 14.3 You may not assign or transfer your rights or obligations under this agreement to any other party without our prior written consent. We reserve the right to assign our rights and obligations under this agreement to another party.
 - 14.4 If any of these terms are determined to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining terms will not be affected.
 - 14.5 This agreement supersedes all prior agreements, representations and warranties. Any instructions we receive from you and all arrangements between the parties are subject to these terms.
 - 14.6 If a dispute arises between the parties either party must notify the other in writing within seven (7) days of the dispute arising. The parties will endeavour to resolve the dispute by negotiation. If the dispute is not resolved within seven (7) days then each party will have the right to refer the dispute for mediation or arbitration at any time. The arbitration will be undertaken in accordance with the Arbitration Act 1996.
 - 14.7 Documentation related to this agreement may be served on you by email.
 - 14.8 We will notify you of any changes to these terms and publish the same on our website - continued provision of products and services will be subject to your signed or written acceptance of the same. All other variations must be mutually agreed in writing.