

- 1. Definitions**
- 1.1 "PPL" shall mean Provincial Investment Holdings Pty Ltd T/A Provincial Plants & Landscapes its successors and assigns or any person acting on behalf of and with the authority of Provincial Investment Holdings Pty Ltd T/A Provincial Plants & Landscapes.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by PPL to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by PPL to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by PPL to the Client.
- 1.5 "Services" shall mean all Services supplied by PPL to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between PPL and the Client in accordance with clause 4 of this contract.
- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 3. Acceptance**
- 3.1 Any instructions received by PPL from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by PPL shall constitute acceptance of the terms and conditions contained herein.
- 3.2 All works will be carried out by PPL between the hours of seven am (7am) to five pm (5pm) Monday to Friday. The Client shall be liable for any and all costs incurred with works required to be undertaken outside of these hours.
- 3.3 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of PPL.
- 3.5 The Client shall give PPL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by PPL as a result of the Client's failure to comply with this clause.
- 3.6 Goods are supplied by PPL only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.7 These terms and conditions are intended to be read in conjunction with the Terms and Conditions contained in: the Fee Schedule and Acknowledgement of Terms for Landscape Design and Environmental Consultancy; Estimate Conditions for Plant Supply; Estimate conditions for Supply and Plant; Estimate conditions for Supply, plant & maintain; Estimate conditions for Landscape works. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 4. Change in Control**
- 4.1 The Client shall give the PPL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the PPL as a result of the Client's failure to comply with this clause.
- 5. Price And Payment**
- 5.1 At PPL's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by PPL to the Client in respect of Goods supplied; or
- (b) PPL's quoted Price (subject to clause 5.3) which shall be binding upon PPL provided that the Client shall accept PPL's quotation in writing within thirty (30) days; or
- 5.2 PPL's estimated Price (subject to clause 5.3) that the Client shall accept in writing within thirty (30) days. This is an estimated Price and the final Price will only be ascertained upon completion of the works. Known variances to the estimated price in excess of 10% are subject to client approval before the works commence.
- 5.3 PPL reserves the right to change the Price in the event of a variation to PPL's quotation or estimate. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of increases to PPL in the cost of materials and labour, or any required printing, or in relation to any scheduling or re-scheduling, or as a result of any loading requirements or delivery times or sites or changes to the design or changes to timelines) will be charged for on the basis of PPL's quotation or estimate and will be shown as variations on the invoice. A twenty percent (20%) fee may be charged in the event that PPL are required to furnish labour and/or materials as a result of a variation that were not provided for in the quotation or estimate Price. Payment for all variations must be made in full at their time of completion.
- 5.4 The estimated or quoted Price does not include possible expenses or damage arising from hidden or unknown contingencies at the job site (latent conditions).
- 5.5 PPL is not liable for any failure or delay in supply of products nor attrition of stock nor damage to works for any cause beyond PPL's control including (but not limited to): 3rd party damage; labour or union difficulties; storm or tempest; flood; fire; accident; delay by the owner of the products in supply; act of God; non-availability of goods; shipping delay; or delay by bank or financial institution.
- 5.6 Estimate prices are based on the full estimate and order quantity of plants not part thereof. Should numbers be reduced or part ordered, prices may vary in accordance with economies of scale.
- 5.7 The estimated or quoted Price is subject to availability of goods at the time of placement of order. Advice of lead times will be given upon ordering.
- 5.8 A purchase order is required to secure Goods and Services.
- 5.9 Valued Customer Discounts may be applied to clients who trade within our 30 day terms and are based on frequency and volume of orders at PPL's discretion.
- 5.10 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5.11 PPL will co-ordinate and integrate the estimates of any consultants or contractors used to undertake the job and will provide the client with one invoice for all trades payable to PPL.
- 5.12 In the event of project cessation pre commencement, payment of order is required in full.
- 5.13 Pricing is subject to change without notice.
- 5.14 Prices will vary for specialist lines and non-stock items.
- 5.15 Stock or products ordered in from external suppliers may be required to be paid for in full prior to dispatch from supplier based on supplier terms of trade and at Provincial's discretion
- 5.16 Stock or products ordered in may incur additional freight costs to be quoted at time of placement of order
- 5.17 If the stated delivery date of an order is changed within 24 hours of the original stated delivery date or after PPL has commenced packing, then the Client agrees to pay all reasonable costs (including time and materials of unpacking, delivery charges and repacking the order) incurred by PPL
- 5.18 Fees for delivery arranged by PPL at the Client's request will be quoted at the time of placement of order and dependent on the size and quantity of order and destination.
- 5.19 PPL reserves the right to charge for packing materials and labour, charged at an hourly rate or percentage of order value.
- 5.20 The customer acknowledges that certain products are plant varieties that are subject to plant breeder's rights pursuant to the *Plant Breeder's Rights Act 1994* (Cth) (**Protective Rights**). The customer is aware that restrictions apply to the propagation and sale of products which are the subject of Protective Rights and the Certified Client undertakes not to exploit commercially any products that are subject to Protective Rights except in accordance with those Protective Rights.
- 5.21 The customer acknowledges that certain products have trade mark protection. The customer is aware that restrictions apply to the use of these trade marks and undertakes not to exploit commercially the products except in accordance with the trade marks protection.
- 5.22 PPL may submit a detailed payment claim at intervals not less than one week for work performed up to the end of each week. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not yet installed.
- 5.23 A twenty five percent (25%) non-refundable deposit on commercial orders over five thousand dollars (\$5000) or orders for stock to be propagated or purchased specifically for a project / order at PPL's sole discretion shall apply.
- 5.24 Residential and small landscape works – 50% deposit is payable prior to commencement of works with balance due in full upon completion.
- 5.25 At PPL's sole discretion:
- (a) payment shall be due on delivery of the Goods, or completion of the Services, or receipt of the invoice; or
- (b) payment for approved Clients shall be made by instalments in accordance with PPL's payment schedule; or
- (c) payment for approved Clients shall be due thirty (30) following the date of the invoice.
- 5.26 Payment terms are COD unless an approved credit account is held where terms are 30 days from invoice date less deposit
- 5.27 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice. A fee breakdown will be provided with the invoice where applicable.
- 5.28 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (may include a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and PPL.
- 5.29 Overdue accounts in 60 days will be placed on hold. Overdue account in 90 days will be suspended and application will be required to re-instate the account after payment has been made. Overdue accounts may be subject to an administration fee of 2.5% of the overdue amount, per month, at Provincial's discretion.
- 6. Packing Charges**
- 6.1 The Client acknowledges and agrees to pay a packing or repacking charge of sixty dollars (\$60) per hour where applicable
- 7. Delivery Charges**
- 7.1 The Client acknowledges and agrees to pay all associated delivery charges. Charges will be advised at the time of placement of order. Costs will be based on size, weight, quantity, destination and freight type.
- 7.2 Where multiple deliveries are required, freight component may increase.
- 7.3 External freight of plant stock or garden décor will be charged at cost + an administration fee
- 8. Delivery Of Goods**
- 8.1 The client must provide a collection or commencement date at the time of placement of order.
- 8.2 The Client acknowledges and agrees that the required delivery date and any special instructions must be advised to PPL within seven (7) working days of the required delivery date.
- 8.3 Any order can be placed on hold for a period of one (1) week, after which PPL shall not guarantee the availability of the Goods allocated to that order.
- 8.4 At PPL's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at PPL's address; or
- (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by PPL or PPL's nominated carrier).
- 8.5 At PPL's sole discretion, any costs of delivery shall be in addition to the Price and will be stated on the invoice.
- 8.6 Delivery by PPL (or PPL's nominated carrier) shall occur Monday to Friday, and any delivery charges shall be calculated by weight, measurement, value, quantity or travelling distance. This shall be advised to the Client prior to delivery and added to the invoice.
- 8.7 Any delivery date stated by PPL is an estimate only, and the final delivery date is at the discretion of PPL's nominated carrier.
- 8.8 Goods will be delivered to the roadside of the delivery site in the case of bulk Goods. Such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. If at the Client's request, the delivery vehicle leaves the road and enters the delivery site to unload, the Client is responsible for providing suitable and safe access for the delivery vehicle and agrees to indemnify PPL (or its nominated carrier) and its agents for all damage and injury to any person and to any public or private property which may result, including any costs associated with enabling the delivery vehicle to leave the site.
- 8.9 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 8.10 PPL may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Where multiple deliveries are required, freight component will increase.
- 8.11 The failure of PPL to deliver shall not entitle either party to treat this contract as repudiated.
- 8.12 PPL shall not be liable for any loss or damage whatsoever due to failure by PPL to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of PPL.
- 8.13 PPL is not liable for any failure or delay in supply of products nor attrition of stock nor damage to works for any cause beyond PPL's control including (but not limited to): 3rd party damage; labour or union difficulties; storm or tempest; flood; fire; accident; delay by the owner of the

- products in supply; act of God; non-availability of goods; shipping delay; or delay by bank or financial institution.
- 8.14 Inability by PPL to obtain or arrange delivery of products will entitle PPL (at its option) to cancel or defer the order.
- 8.15 PPL accepts no liability for the damage caused to fences, buildings, trees, under or above ground pipes, conduits or cables, equipment or any structure whatsoever by any delivery.
- 8.16 It is the responsibility of the client to provide heavy lifting equipment where the freight company does not. Advice will be given prior to delivery and the Client is responsible for any costs incurred in doing so.
- 8.17 Though the Client may negotiate with the driver at time of delivery, PPL (or the carrier) reserves the final decision of stock placement on site.
- 8.18 Neither PPL nor the carrier shall be liable for any loss, damages or costs, however arising from placement of the goods.
- 8.19 Placement of pot or garden décor is the responsibility of the Client unless prior arrangement has been made with PPL or their nominated carrier.
- 9. Landscape Design + Environmental Consultancy**
- 9.1 The Client acknowledges and agrees that any costs incurred by PPL for the printing of drawings, shall be invoiced to the Client as a variation as per clause 5.3, and shall become due and payable immediately.
- 9.2 Any Landscape Design and post completion design services, or any further drawings or site visits will be charged to the Client at two hundred dollars (\$200) per hour for Landscape Design services by the Principal.
- 9.3 Any Environmental consultancy, Landscape / Environmental Assessments, Technical Specifications and Maintenance Reports will be charged to the client at two hundred dollars (\$200) per hour.
- 9.4 The Client acknowledges and agrees that they are responsible for any required submissions to the local authorities, unless prior agreed between the Client and PPL.
- 9.5 It is the Client's responsibility to advise the scope of the Service required within stages one (1) to six (6) as detailed in the Fee Schedule and Acknowledgement of Terms for site visits and landscape design services.
- 9.6 Prices given in stages one (1) to six (6) in the Fee Schedule and Acknowledgement of Terms for site visits and landscape design services, are guides only and the final Price depends on the scale and scope of the Works required. This is an estimated Price and the final Price will only be ascertained upon completion of the Works. Variations to the estimated price in excess of 10% are subject to client approval before the works commence.
- 10. Risk**
- 10.1 If PPL retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on at the time when the Goods have been placed on the delivery vehicle for delivery.
- 10.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, PPL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by PPL is sufficient evidence of PPL's rights to receive the insurance proceeds without the need for any person dealing with PPL to make further enquiries.
- 10.3 It is the intention of PPL and agreed by the Client, that it is the responsibility of the Client to provide any heavy lifting equipment (including, but not limited to, forklifts), where required, and the Client shall be responsible for any costs incurred in doing so.
- 10.4 Paver pallets may be moved by pallet jack and require a flat and even surface without any obstacles. Although the Client is entitled to negotiate the preferred location for placement of the pavers directly with the driver at time of delivery, it is at the sole discretion of PPL (or their nominated carrier) as to the final location of paver pallets, and neither PPL nor the carrier shall be liable for any loss, damages, or costs however arising from placement of the pavers.
- 10.5 The Client acknowledges and agrees that all paver products are well wrapped and packaged, and that PPL makes every effort to take the best possible care during packaging and delivery, however due to the nature of the Goods breakages are expected. PPL recommends that when placing orders the Client should request a further three to five percent (3%-5%) to allow for these expected breakages. The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 10.6 It is the responsibility of the Client to dispose or discard of any pallets received in delivery. These can be recycled at PPL's address, at the cost of the Client, including freight charges.
- 10.7 In the event that PPL is required to travel outside the metro area to deliver the Goods or complete the Services, then the Client will be responsible for any travel costs incurred by PPL, all such costs will be shown as an extra on the invoice.
- 10.8 In the event that PPL is required to stay close to the worksite overnight in order to deliver the Goods or complete the Services, then the Client will be responsible for any accommodation costs (including, but not limited to, the cost of any meals) incurred by PPL, all such costs will be shown as an extra on the invoice.
- 10.9 Advanced trees and any plant stock are to be inspected by the Client upon delivery by PPL or its nominated carrier. Any claims by the Client must be received in writing within 24 hours of receipt of stock or will not be recognised. We will accept no liability in excess of the purchase price of the plants
- 10.10 All risk for the goods passes to the client at the time of loading into the delivery vehicle.
- 10.11 A guarantee on tree or plant stock is not offered for damage in transport by an external carrier
- 10.12 A guarantee on tree or plant stock is not offered after receipt of stock by the Client and in the event of but not limited to the following: trees drying out; damage to roots during planting or after due to movement (wind); over watering; poor drainage; pests and disease; contamination of soil; use of herbicides and spray drift; planting in unsuitable locations or climates; incorrect pruning; gas contamination; compaction of soil; vandalism; mechanical damage; allowing the root ball to dry out & become impermeable to water; improper handling, transport or maintenance by the Client
- 11. Paving Products, Pots and Décor**
- 11.1 The Client acknowledges and agrees that payment for these products is required in full three (3) days prior to dispatch, and the deposit (if applicable) shall be due upon placement of order, or acceptance of quotation.
- 11.2 A fifty per cent (50%) non-refundable deposit on paver orders, garden décor, and orders sourced from interstate offices and container forward orders. Paver pallet orders will be held free of charge for two (2) weeks (upon arrival in Canberra). After this, pallet storage will incur a charge of twenty dollars (\$20) per pallet per week.
- 11.3 The Client acknowledges that paving products and our decorative pot range are hand made; therefore Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time with direct exposure to sun and weather. Sizes and weights are also approximates only and due to the inherent nature of the material, variations during processing may occur. PPL will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 12. Plants, Planting, Landscaping and Maintenance**
- 12.1 Estimates are based on plants being grown in house with adequate time lines. Plant procurement from external providers may incur additional charges for stock and or freight to be advised at the time of placement of order.
- 12.2 Sourced stock from external suppliers may be required to be paid for in full at the time of placement of order and prior to dispatch from supplier based on supplier terms of trade and at PPL's discretion
- 12.3 Advanced tree stock purchased on customer's behalf requires a 50% deposit and payment in full three (3) days prior to dispatch by the supplier
- 12.4 Sourced plants are charged at cost price plus an administration charge plus freight.
- 12.5 The minimum number of sourced plants are to be no less than five (5) full trays of forty (40) tubes or fifty (50) pots at PPL's discretion on wholesale orders
- 12.6 Tray deposits of four dollars (\$4) per hiko tube tray apply and four dollars (\$4) per 200mm SR apply. These are fully refundable on return. Prior arrangement can be made to list trays on the Tray Deposit Register upon dispatch and return trays within two (2) weeks of dispatch to avoid incurring the deposit charge.
- 12.7 The deposit charge is refunded via credit applied to the clients account
- 12.8 Trays not returned for credit within six (6) months of dispatch date will not be accepted for return or credit
- 12.9 The quotation or wholesale Price is based on the purchase of full trays in minimum numbers, (one hundred and twenty-eight (128) or two hundred (200) cells per tray or forty (40) tubes per hiko tray or twenty times one hundred and forty millimetres (140mm) or two hundred millimetre (200mm) pot sizes. In the event that the Client requests trays to be broken up, species to be combined or individual plants are required then the Price will increase to cover the cost of handling.
- 12.10 Where trays are broken up and species combined, or individual plants are required, add a 10% handling charge per tray to cover the cost of handling at PPL's discretion.
- 12.11 Plants grown by PPL are guaranteed to be healthy and true-to-type at time of delivery or pick up.
- 12.12 In the event that plants supplied are not in accordance with label or description, or for another reason do not meet customer requirements our liability is limited to, at our discretion, either refund of purchase price or replacement with new plants when available.
- 12.13 No warranty is offered as to performance of plants once they have been received or planted by others
- 12.14 A twenty five percent (25%) non-refundable deposit on orders over five thousand dollars (\$5000) at PPL's sole discretion shall apply.
- 12.15 Upon ordering plants that are in stock and provision of a supply / collection date by the Client, these plants will be held for two (2) weeks, free of charge from that supply / collection date.
- 12.16 After this date, holding fees of 5% of the invoice total will be charged per plant, per week (1) period. These holding fees will be applied at PPL's discretion. Payment terms on holding fees are COD
- 12.17 All contract and pre-grow orders require a twenty five percent (25%) deposit to commence plant propagation.
- 12.18 Whilst the best care is taken to maintain stock held over in excess of two (2) weeks past Client advised supply / collection date, external factors including but not limited to the following may result in plant attrition: the natural life cycle of plants, restrictions of container sizes, vandalism, 3rd party damage, storm and tempest, fire, accident or acts of God. During extended holding periods, or that in excess of two (2) weeks from Client supplied collection / supply date, no guarantee is offered on survival of plants. Holding fees will apply until the date of attrition and the client will be advised of the attrition within five (5) working days. All liability for the replacement cost of plants occurring when held for extended periods or where the date exceeds two (2) weeks from the advised supply / collection date falls to the Client and PPL will not be held liable for the cost of plant replacement.
- 12.19 All plants are supplied by Provincial are hardened off. Where plants are sourced from external suppliers, PPL accepts no responsibility for the hardening of plants.
- 12.20 The customer acknowledges that certain products are plant varieties that are subject to plant breeder's rights pursuant to the *Plant Breeder's Rights Act 1994* (Cth) (**Protective Rights**). The customer is aware that restrictions apply to the propagation and sale of products which are the subject of Protective Rights and the Certified Client undertakes not to exploit commercially any products that are subject to Protective Rights except in accordance with those Protective Rights.
- 12.21 The customer acknowledges that certain products have trade mark protection. The customer is aware that restrictions apply to the use of these trade marks and undertakes not to exploit commercially the products except in accordance with the trade marks protection.
- 12.22 Prices do not include watering in nor cost of water required unless noted on the estimate.
- 12.23 Prices include watering in from an on site water source using hydrants or similar. Where external or offsite cartage is required, prices will vary.
- 12.24 The client is liable for all costs associated with the maintenance of a project up to practical completion unless PPL undertakes a contract to do so.
- 12.25 Prices include supply and installation of water crystals and slow release fertiliser as applicable per project.
- 12.26 Where site preparation is undertaken by others, Planting Prices are based on suitable site preparation including: level access; non compacted soils; prepared beds, ripped to three hundred millimetre (300mm) depth, and top soiled; mulch to a maximum of 75mm; direct drilling into mulch without necessity for handling. Planting price will be reviewed if site conditions vary upon inspection.
- 12.27 Planting prices assume dry surfaces and that wetlands are not inundated.
- 12.28 Price does not include allowance for removal of rock exposed during excavation works. Rock removal will be quoted and are subject to client approval pre works.
- 12.29 Pricing does not include an allowance for rock sifting or picking in Client supplied topsoil unless noted.
- 12.30 The client acknowledges and agrees that while all care is taken, it is not in our control to be able to supply or produce totally weed free soil or mulch.
- 12.31 PPL have made no allowance for any water restrictions that could arise from time to time during the works.
- 12.32 PPL take no responsibility for the realigning and adjustment of existing services including but not limited to underground gas, water, telephone, NBN, electrical services, service pits and manholes.
- 12.33 PPL is not responsible for the identification and removal of asbestos on site.
- 12.34 No allowance made for traffic control unless noted.
- 12.35 This estimate does not include possible expenses or damage arising from hidden or unknown contingencies at the job site (latent conditions)
- 12.36 Damage to works by external factors including but not limited to 3rd parties, vandalism, storm and tempest, fire, accident or acts of God are out of PPL's control and are to be treated as variations with costs to be paid by the Client. PPL may offer a discounted rate to remediate works by negotiation.
- 13. Access**
- 13.1 The Client shall ensure that PPL has clear and free access to deliver the Goods at all times to enable them to undertake the delivery. PPL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of PPL.

14. Underground Locations

- 14.1 Prior to PPL commencing any work the Client must advise PPL of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, NBN, oil pumping mains, and any other services that may be on site.
- 14.2 Whilst PPL will take all care to avoid damage to any underground services the Client agrees to indemnify PPL in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 14.1.

15. Title

- 15.1 PPL and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid PPL all amounts owing for the particular Goods; and
 - the Client has met all other obligations due by the Client to PPL in respect of all contracts between PPL and the Client.
- 15.2 Receipt by PPL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then PPL's ownership or rights in respect of the Goods shall continue.
- 15.3 It is further agreed that:
- where practicable the Goods shall be kept separate and identifiable until PPL shall have received payment and all other obligations of the Client are met; and
 - until such time as ownership of the Goods shall pass from PPL to the Client PPL may give notice in writing to the Client to return the Goods or any of them to PPL. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - PPL shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - if the Client fails to return the Goods to PPL then PPL or PPL's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - the Client is only a bailee of the Goods and until such time as PPL has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to PPL for the Goods, on trust for PPL; and
 - the Client shall not deal with the money of PPL in any way which may be adverse to PPL; and
 - the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of PPL; and
 - PPL can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that PPL will be the owner of the end products.

16. Defects

- 16.1 The Client shall inspect the Goods on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify PPL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. Photographic evidence may be required. The Client shall afford PPL an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which PPL has agreed in writing that the Client is entitled to reject, PPL's liability is limited to either (at PPL's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods. The original tax invoice must be returned with the order and the Goods must be returned in their original condition. PPL is not responsible or liable for the freight delivery costs, costs of return freight or cost of freight for products that have been relocated from the place of delivery.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above.
- 16.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

- 16.4 PPL acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

16.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, PPL makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. PPL's liability in respect of these warranties is limited to the fullest extent permitted by law.

16.6 If the Client is a consumer within the meaning of the CCA, PPL's liability is limited to the extent permitted by section 64A of Schedule 2.

16.7 If PPL is required to replace the Goods under this clause or the CCA, but is unable to do so, PPL may refund any money the Client has paid for the Goods.

16.8 If the Client is not a consumer within the meaning of the CCA, PPL's liability for any defect or damage in the Goods is:

- limited to the value of any express warranty or warranty card provided to the Client by PPL at PPL's sole discretion;
 - limited to any warranty to which PPL is entitled, if PPL did not manufacture the Goods;
 - otherwise negated absolutely.
- 16.9 Subject to this clause 16, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 16.1; and
 - PPL has agreed that the Goods are defective; and
 - the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.

16.10 Notwithstanding clauses 16.1 to 16.10 but subject to the CCA, PPL shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- the Client failing to properly maintain, transport or store the Goods;
- the Client using the Goods for any purpose other than that for which they were designed;
- the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- the Client failing to follow any instructions or guidelines provided by PPL in regard to the proper care of the Goods (including but not limited to, adequate watering of the Goods);
- fair wear and tear, any accident, or act of God.

17. Warranty

17.1 For Goods not manufactured by PPL, the warranty shall be the current warranty provided by the manufacturer of the Goods. PPL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

17.2 To the extent permitted by statute, no warranty is given by PPL as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. PPL shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

18. Intellectual Property

18.1 Where PPL has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in PPL, and shall only be used by the Client at PPL's discretion.

18.2 The Client warrants that all designs or instructions to PPL will not cause PPL to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify PPL against any action taken by a third party against PPL in respect of any such infringement.

18.3 The Client hereby authorises PPL to utilise images of the Goods designed or drawn by PPL in advertising, marketing, or competition material by PPL.

18.4 The customer acknowledges that certain products are plant varieties that are subject to plant breeder's rights pursuant to the *Plant Breeder's Rights Act 1994* (Cth) (**Protective Rights**). The customer is aware that restrictions apply to the propagation and sale of products which are the subject of Protective Rights and the Certified Client undertakes not to exploit commercially any products that are subject to Protective Rights except in accordance with those Protective Rights.

18.5 The customer acknowledges that certain products have trade mark protection. The customer is aware that restrictions apply to the use of these trade marks and undertakes not to exploit commercially the products except in accordance with the trade marks protection.

19. Default & Consequences of Default

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at PPL's sole discretion such

interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by PPL.

19.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify PPL from and against all costs and disbursements incurred by PPL in pursuing the debt including legal costs on a solicitor and own client basis and PPL's collection agency costs.

19.4 Without prejudice to any other remedies PPL may have, if at any time the Client is in breach of any obligation (including those relating to payment) PPL may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. PPL will not be liable to the Client for any loss or damage the Client suffers because PPL has exercised its rights under this clause.

19.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00) shall be levied for administration fees which sum shall become immediately due and payable.

19.6 Without prejudice to PPL's other remedies at law PPL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PPL shall, whether or not due for payment, become immediately payable in the event that:

- any money payable to PPL becomes overdue, or in PPL's opinion the Client will be unable to meet its payments as they fall due; or
- the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Security And Charge

20.1 Despite anything to the contrary contained herein or any other rights which PPL may have howsoever:

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

20.2 In consideration of PPL agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

20.3 The Client indemnifies PPL from and against all PPL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PPL's rights under this clause.

20.4 The Client irrevocably appoints PPL and each director of PPL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 20 including, but not limited to, signing any document on the Client's behalf.

21. Dispute Resolution

21.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute within ten (10) working days. Within ten (10) working days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 22. Compliance with Laws**
- 22.1 The Client and PPL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 22.2 The Client shall obtain at their expense all licenses and approvals that may be required for the works.
- 22.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction/landscaping/re-vegetation and any other relevant safety standards or legislation.
- 22.4 All customers agree to abide by the Safety Policy, dealing with (without limitation) safety on the Premises, being the current policy displayed by Landscapers and Nursery Traders from time to time on the web site of PPL (www.plantsandlandscapes.com.au) or such other website as notified by PPL for that purpose ('website'), and at trading locations. PPL may add to or vary, the Safety Policy at any time.
- 23. Cancellation**
- 23.1 PPL may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice PPL shall repay to the Client any sums paid in respect of the Price. PPL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.2 In the event that the Client cancels delivery of Goods the Client must advise PPL within seventy-two (72) hours of delivery or the Client shall be liable for any loss incurred by PPL (including, but not limited to, any loss of profits) up to the time of cancellation, or a fifty dollar (\$50) cancellation charge.
- 23.3 In the event that the Client postpones delivery of Goods the Client must advise PPL within seventy-two (72) hours of delivery, and the Client shall be liable for any loss incurred by PPL (including, but not limited to, any loss of profits) up to the time of postponement.
- 23.4 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced, and the Client will be liable for any and all costs incurred by PPL for the specific purchase order.
- 24. Privacy Act 1988**
- 24.1 The Client and/or the Guarantor/s agree for PPL to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by PPL.
- 24.2 The Client and/or the Guarantor/s agree that PPL may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the credit worthiness of Client and/or Guarantor/s.
- 24.3 The Client and/or Guarantor/s understands that the information exchanged can include anything about the Client and/or Guarantor/s creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 24.4 The Client consents to PPL being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 24.5 The Client agrees that personal credit information provided may be used and retained by PPL for the following purposes (and for other purposes as shall be agreed between the Client and PPL or required by law from time to time):
- the provision of Goods; and/or
 - the marketing of Goods by PPL, its agents or distributors; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 24.6 The information given to the credit reporting agency may include:
- personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Client's application for credit or commercial credit and the amount requested;
 - advice that PPL is a current credit provider to the Client;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of PPL, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Client by PPL has been paid or otherwise discharged.
- 24.7 The client agrees that a credit report may contain the following information:
- Identity details
 - Credit application history
 - Repayment problems
 - Date of account opened and closed
 - Credit providers name, type of account & limit
 - Accounts repayment history
- 24.8 The Client agrees that personal credit information provided may be used and retained by PPL for the following purposes and for other purposes as shall be agreed between the Client and PPL or required by law from time to time:
- provision of Goods; and/or
 - marketing of Goods by PPL, its agents or distributors in relation to the Goods; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 24.9 PPL may give information about the Client to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Client; and/or
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 24.10 A copy of our Privacy Policy is available upon request
- 25. Personal Property Securities Act 2009 ("PPSA")**
- 25.1 For the avoidance of any doubt, the security interest(s) created by this agreement in favour of the Owner constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
- 25.2 At PPL's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Personal Property Securities Act 2009 may apply.
- 25.3 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Personal Property Securities Act 2009 except to the extent permitted by the Act where applicable.
- 25.4 **WAIVER:** A waiver of any provision or breach of this agreement by the Owner must be made by an authorised officer of the Owner in writing. A waiver of any provision or breach of this agreement by the Client must be made by the Client's authorised officer in writing.
- 25.5 The Client waives its rights it would otherwise have under the PPSA. Under section:
- 95 to receive notice of intention to remove an accession;
 - 118 to receive notice that the Owner intends to enforce its interest in accordance with land law;
 - 121(4) to receive a notice of enforcement action against liquid assets;
 - 130 to receive a notice to dispose of goods;
 - 132(2) to receive a statement of account following disposal of goods;
 - 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - 135 to receive notice of any proposal of the Owner to retain goods;
 - 137(2) to object to any proposal of the Owner to retain or dispose of goods;
 - 142 to redeem the goods;
 - 143 to reinstate the security agreement; and
 - 157(1) and 157 (3) to receive a notice of any verification statement.
- 25.6 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 25.7 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the PPL to the Client.
- 25.8 The Client undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the PPL may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPL; or
 - correct a defect in a statement referred to in clause 25.3(a)(i) or 25.3(a)(ii);
 - indemnify, and upon demand reimburse, PPL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of PPL;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of PPL;
 - immediately advise PPL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 25.9 The Client must unconditionally ratify any actions taken by PPL under clauses 25 inclusive.
- 25.10 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 26. Building & Construction Industry Security of Payments Act 1999 (NSW) & 2009 (ACT)**
- 26.1 At PPL's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 (NSW) and 2009 (ACT) may apply.
- 26.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 (NSW) and 2009 (ACT), except to the extent permitted by the Act where applicable.
- 27. Changes to terms and conditions**
- 27.1 PPL may review these terms and conditions at any time. If there is any change to these terms and conditions, then that change will take effect from the date on which: PPL notifies the Client of such change; or publishes the amended terms on the website; by displaying the Conditions in store; or by otherwise notifying the Client. The amended Terms & Conditions will apply to any sales from the time the amendment is made and published. This will not affect the validity or enforceability of the agreement between the Owner and the Client.
- 28. General**
- 28.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired. These terms and conditions and any contract to which they apply shall be governed by the laws of the State the sale is made and are subject to the jurisdiction of the courts of that State.
- 28.2 PPL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PPL of these terms and conditions.
- 28.3 In the event of any breach of this contract by PPL the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 28.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PPL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 28.5 PPL may license or sub-contract all or any part of its rights & obligations without the Client's consent. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 28.6 The failure by PPL to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PPL's right to subsequently enforce that provision.