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4. Provincial Plants & Landscapes

4.1 The Client shall make the Client (or any person acting on behalf of and with the authority of the Provincial Investment Holdings Pty Ltd T/A Provincial Plants & Landscapes) the Client.

4.2 "Guarantor" means that person (or persons), or entity, who, to the extent the Client is liable hereunder, shall be jointly and severally liable with the Client and in accordance with clause 4 of this contract.

4.3 "Goods" shall mean Goods supplied by PPL to the Client (and where the context so permits shall include any supply of services by PPL (or any of its affiliated defined in clause 4 of this contract). PPL reserves the right to charge the Price in the event of a variation of PPL's quotation or estimate. Any variation from the plans or specifications submitted with the quote (including, but not limited to, any variation as a result of increases to PPL in the cost of materials and labour, or any request for work outside of the quoted quantity or re-scheduling, or as a result of any loading requirements or delivery times or sites or changes to the design or changes to the specifications) will be charged at 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 to cover the cost of additional loading and unloading of parts, 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 completion.

5. Price

5.1 The estimated or quoted Price does not include possible expenses or damage arising from hidden or unknown conditions or inaccuracies in the existing site.

5.2 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 packaging and repacking the order) incurred by PPL.

5.3 Fees for delivery arranged by PPL at the Client's request will be charged in addition to the cost of the product and are based on the size and quantity of order and destination. Any such additional cost shall be charged to the Client prior to delivery and added to the invoice.

5.4 The Client requires the right to charge for packing materials and labour, charged at an hourly rate or percentage of order value.

5.5 The customer acknowledges that certain products have rights subject to Protective Rights except in circumstances where multiple deliveries are required, freight component may increase.

5.6 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.

5.7 The Client is aware that PPL may charge in the event that PPL are required to furnish re-scheduling, or as a result of any loading requirements or delivery times or sites or changes to the design or changes to the specifications). Where multiple deliveries are required, freight component may increase.

5.8 The Client must provide a packing list with the invoice where applicable.

5.9 The estimated or quoted Price does not include possible expenses or damage arising from hidden or unknown conditions or inaccuracies in the existing site.

5.10 Payment for all variations must be made in full at their completion.

5.11 The Client acknowledges and agrees to pay a packing or repacking charge of sixty dollars ($60) per hour where applicable.

5.12 The Client shall make the Client (or any person acting on behalf of and with the authority of the Provincial Investment Holdings Pty Ltd T/A Provincial Plants & Landscapes) the Client.

5.13 "Price" shall mean the price payable for the Goods as agreed to herein and the Client in accordance with clause 4 of this contract.

5.14 Any instructions received by PPL from the Client for the supply of Goods or Services shall be confirmed in writing by both PPL and the Client, a copy of the confirmation in writing is provided with the invoice where applicable.

5.15 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. The estimated or quoted Price shall be based on the cost of materials and labour, or any request for work outside of the quoted quantity or re-scheduling, or as a result of any loading requirements or delivery times or sites or changes to the design or changes to the specifications. The estimated or quoted Price does not include possible expenses or damage arising from hidden or unknown conditions or inaccuracies in the existing site.

5.16 The Client shall give the 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 and all costs incurred with works required to be undertaken outside of these hours.

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 packaging and repacking the order) incurred by PPL.

5.18 Fees for delivery arranged by PPL at the Client's request will be charged in addition to the cost of the product and are based on the size and quantity of order and destination. Any such additional cost shall be charged to the Client prior to delivery and added to the invoice.

5.19 The Client acknowledges and agrees to pay a packing or repacking charge of sixty dollars ($60) per hour where applicable.

5.20 The estimated or quoted Price does not include possible expenses or damage arising from hidden or unknown conditions or inaccuracies in the existing site.

5.21 Any instructions received by PPL from the Client for the supply of Goods or Services shall be confirmed in writing by both PPL and the Client, a copy of the confirmation in writing is provided with the invoice where applicable.

5.22 The estimated or quoted Price does not include possible expenses or damage arising from hidden or unknown conditions or inaccuracies in the existing site.

5.23 Any instructions received by PPL from the Client for the supply of Goods or Services shall be confirmed in writing by both PPL and the Client, a copy of the confirmation in writing is provided with the invoice where applicable.
10. In the event that PPL is required to stay close to the worksite overnight in order to deliver the Goods or complete the Services, the Client acknowledges and agrees that all such costs will be invoiced to the Client as a variation as per clause 5.3, and shall become due and payable immediately.

11. If any deposit on Custom or post completion design services, or any further drawings or site visits will be charged to the Client at two hundred dollars ($200) per site visit or post completion design for full completion.

12. Any Environmental, Surveying, Landscape or Environmental Assessments, Specialist Specifications and Maintenance Reports will be charged to the Client at two hundred dollars ($200) per hour, in accordance with the Fee Schedule.

13. The Client acknowledges and agrees that they are responsible for any required submissions to the local Council and responsible for any required permits.

14. It is the responsibility of the Client to be present on site when placing orders the Client should request a further confirmation of plant delivery.

15. No allowance made for traffic control unless noted.

16. PPL is not responsible for the identification and removal of underground gas, water, telephone, NBN, electrical conduits, plumbing, underground gas, water, telephone, NBN, electrical conduits, plumbing, trees, under or above ground pipes, conduits or any other hidden or unknown contingencies at any job site. This estimate does not include possible expenses or damage arising from hidden or unknown contingencies at any job site. No allowance made for traffic control unless noted.

17. Access to the job site (latent conditions). A guarantee on tree or plant stock is not offered after the agreed delivery date.

18. The Client shall ensure that PPL has clear and free access to the site to deliver or complete the Goods or Services.

19. In the event that plants supplied are not in accordance with the order, the Client may request them to be returned at the Client’s expense. The Client shall be responsible for any required submissions to the local Council and responsible for any required permits.

20. Damage in transport by an external carrier is the responsibility of the Client. All risk for the goods passes to the Client at the time of placement of order. 

21. PPL undertakes not to exploit commercially the products intended for resale.

22. After this, holding fees will apply until the date of attrition and the Client will be advised of the attrition within five (5) working days in writing. PPL will invoice the Client for all costs occurring when held for extended periods or where the date exceeds two (2) weeks from the advised supply / collection date. 

23. A twenty five percent (25%) non-refundable deposit on orders over five thousand dollars ($5000) at PPL’s sole discretion.

24. 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.

25. After this date, holding fees of 5% of the invoice total will be charged to the Clients. PPL will invoice for all costs occurring when held for extended periods or where the date exceeds two (2) weeks from the advised supply / collection date.

26. If any of the Goods are damaged or destroyed following delivery but prior to passing ownership to the Client, PPL is entitled to be compensated for its loss and shall be free from liability for the Goods. The production of these terms and conditions by PPL is sufficient evidence of PPL’s rights to receive the amount that shall be paid to PPL in respect of any risk or subsistence being dealt with by PPL to make further enquiries.

27. The client acknowledges and agrees that while all care is taken, it is not in our control to be able to supply or deliver plants that are ordered on or after the agreed delivery date.

28. The client acknowledges and agrees that they are responsible for any required submissions to the local Council and responsible for any required permits.

29. All risk for the goods passed to the Client when the Goods or Services are placed in delivery.

30. A guarantee on tree or plant stock is not offered for different species of plants when placed in delivery.

31. A guarantee on tree or plant stock is not offered after receipt of plant by the Client and in the event of but not limited to the plant being under stress due to transplanting or due to adverse weather conditions, injury or crime or due to any other circumstance beyond the control of PPL.

32. Advanced trees and any plant stock are to be inspected by the Client as soon as possible after delivery. In the event that plants supplied are not in accordance with the order, the Client may request them to be returned at the Client’s expense.

33. PPL is not responsible for the cost of plant replacement.

34. Pricing does not include an allowance for rock sifting or grading required. Prices include supply and installation of water crystals and slow release fertiliser as applicable per project.

35. The Client can request for a copy of our drainage plan for the project.

36. The Client shall ensure that PPL has clear and free access to the site to deliver or complete the Goods or Services.
14. Underground Locations
14.1 Prior to PPL commencing any work the Client must advise PPL of the presence of any underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, gas services, electrical services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, gas mains, any underground 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, PPL will not be responsible 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 remain with PPL until delivery.
15.2 the Client has paid PPL all amounts owing for the particular Goods; and
15.3 PPL has paid 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 PPL’s title or rights in respect of the Goods shall continue.

15.3 It is further agreed that:
(a) while the Goods shall remain the property of PPL until payment has been received and cleared, the Client acknowledges that unless the Goods have been specifically contractually agreed to be delivered elsewhere in writing, the Client shall not offer the Goods for sale or delivery to any third party;
(b) 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
(c) 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 (including those relating to payment) for the benefit of PPL.

15.4 Should the Client default in payment of any invoice when due, PPL shall not be responsible or liable for the freight delivery costs, costs of return freight or cost of freight for products that have been sold on the basis of credit terms and any other costs in recovering debt. In such event, PPL shall be entitled to recover the Price of the Goods, on trust for PPL; and

15.5 the Client shall not deal with the money of PPL in any way which may be adverse to PPL; and
15.6 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
15.7 PPL can issue proceedings to recover the Price of the Goods and PPL’s costs and disbursements incurred by PPL in pursuing the debt.

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) inspect the Goods to determine if the Goods are in order and free from defects or damage, or complete and fit for the purpose or in accordance with the description or quote. Photographical 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 does not lodge a claim for a refund, replacement, repair or credit within (at PPL’s discretion) replacing the Goods or refund of the purchase price of the Goods, or in respect of the Non-Excluded Guarantees, PPL shall not be responsible for any loss or damage to the Goods or in respect of the Non-Excluded Guarantees, PPL shall not be responsible for any loss or damage to the Goods or to any person arising as a result of the use of the Goods or any part thereof however arising.

17. Warranty
17.1 For Goods not manufactured by PPL, the warranty shall not be the current warranty provided by the manufacturer of the Goods. PPL shall not be bound by or responsible for any term, condition, representation or warranty other than that, which is given by the manufacturer of the Goods.

18. Intellectual Property
18.1 Where PPL has designed, drawn or written Goods for the Client, the copyright in those designs and drawings and documents shall remain vested in PPL, and shall only be used by PPL’s successors in title and shall include PPL’s right to sell or licence to others the right to use such copyright and/or designs and documents.

19. Security and Charge
19.1 Despite anything to the contrary contained herein or any other rights which PPL may have howsoever:
(a) the Client and/or the Guarantor (if any) are 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 interests in the 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;
(b) 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 any other costs which PPL may have howsoever including legal costs on a solicitor and own client basis.

20. Dispute Resolution
20.1 A dispute between the parties to this contract that the Client 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 of receiving the notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At no such conference each party shall be represented by a duly authorised representative. If the dispute cannot be so resolved either party may by further notice in writing delivered to the other party refer such dispute to arbitration. Any arbitration shall be:
(a) conducted by a person having authority to agree to a person having authority to agree to the appointment of an arbitrator, the parties to the dispute shall appoint an arbitrator to perform the dispute. In the event that the Client infers or does not resolve the dispute by a duly appointed arbitrator within twenty (20) days of the date of such notice, the Client shall be entitled to appoint an arbitrator.
(b) conducted by an arbitrator appointed by the Institute of Arbitrators Australia; and
(c) 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 any other costs which PPL may have howsoever including legal costs on a solicitor and own client basis.

21.1 The Client hereby authorises PPL to utilise images of the Client’s plantings or productions for display purposes in any media to the Client’s, PPL’s or any joint or several) in any land, realty or other assets capable of being charged. Both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interests in the 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;
24. Compliance with Laws

24.1 The Client shall comply with all provisions of all applicable laws, regulations, bylaws, codes, and any other regulations or bylaws which may be applicable to the Client. The Client acknowledges that the Client is responsible for the Client's own compliance with all laws, regulations, bylaws, and other regulations or bylaws which may be applicable to the Client.

24.2 The Client shall ensure that it complies with all occupational health and safety laws relating to building/construction/landscaping/re-vegetation and any other relevant safety standards or legislation.

24.3 The Client shall comply with all terms and conditions of the Safety Policy, dealing with (without limitation) safety on the Premises, the current policy current by the Client's business, and trading locations. PPL may add to or vary, the Safety Policy at any time.

24.4 The Client shall maintain a copy of the Safety Policy and at trading locations. PPL may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client; and/or
(b) to add to or vary the Safety Policy at any time.

24.5 The Client agrees that a credit report may contain the following information:

(i) identity details
(ii) credit application history
(iii) repayment history
(iv) date of account opened and closed
(v) credit product information (such as account & limit
(vi) accounts repayment history

24.6 The Client agrees that personal information 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:

(a) provision of Goods, and/or
(b) marketing of Goods by PPL, its agents or distributors in relation to the Goods; and/or
(c) analysing, verifying and/or checking the Client's credit, payment and/or credit status in relation to the Goods; and/or
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(e) enabling the PPL to verify the Client's creditworthiness, credit or any outstanding monies are no longer overdue debt collection action has been started; and/or
(f) refunding or releasing any Goods charged thereby; and/or
(g) the PPL may reasonably require to
(h) the PPL may reasonably require to; and/or
(i) including, but not limited to, any loss of profits) up to the time of time of cancellation, or a fifty ($50) dollar refund for returns of Goods (including, but not limited to, any loss of profits) up to the time of time of cancellation, or a fifty ($50) dollar refund for returns of Goods.

24.7 PPL may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client; and/or
(b) to add to or vary the Safety Policy at any time.

24.8 The amended Terms & Conditions will apply to any sale from the time the amendment is made and the Client must unconditionally ratify any actions taken by PPL under clauses 25 inclusive.  

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 Security 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 Security 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 Security Act 2009 except to the extent permitted by law.

25.4 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 must be made by 24.8.4 the Authorised Officer in writing.

25.5 The Client waives its rights it would otherwise have under the PPSA. Under section:

(i) 95 to request notice of intention to remove an accession;
(ii) 118 to receive notice that the Owner intends to enforce its interest in accordance with local law;
(iii) 121(1)(a) to receive a notice of enforcement action against liquid assets; and
(iv) 130 to receive notice of disposal of goods;
25.6 The Client waives its rights it would otherwise have under the PPSA. Under section:

(i) 95 to request notice of intention to remove an accession;
(ii) 118 to receive notice that the Owner intends to enforce its interest in accordance with local law;
(iii) 121(1)(a) to receive a notice of enforcement action against liquid assets; and
(iv) 130 to receive notice of disposal of goods;