

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Growers Direct" means Grower Direct Limited, its successors and assigns or any person acting on behalf of and with the authority of Grower Direct Limited.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Growers Direct to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Growers Direct to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Growers Direct and the Client in accordance with clause 6 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Growers Direct and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Growers Direct reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 These terms and conditions may be meant to be read in conjunction with Growers Direct's Hire Form, and:
 - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.8 The Client acknowledges and accepts that:
 - (a) lead times may vary and be dependent on plant variety growing times, propagation requirements, and the quantity required;
 - (b) planting for optimal results is weather and season dependent and any planting schedules may be based on these factors.
- 2.9 Where the Client requesting or organising Growers Direct to provide the Services is acting on behalf of any third party (including but not limited to multiple property owners and/or contributors to any driveway, fence, retaining wall), and that third party is intended to be responsible for the either the full or partial payment of the Price, then in the event that third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the full payment of the Price as if they had contracted the Services on their own behalf.
- 2.10 The Client accepts and acknowledges:
 - (a) the responsibility for obtaining all permits and permissions relating to tree removal and/or trimming of trees, (including but not limited to council approval, parking, road closures, traffic management and traffic control plans, standing of equipment and operation of equipment on the road and or pedestrian pathway). Failure to comply with this clause that results any fines incurred shall be borne by the Client;
 - (b) that Growers Direct shall not be held responsible for any damages to glass windows or doors or other structures as a result of debris being thrown during any stump grinding work.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Growers Direct shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by Growers Direct in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Growers Direct in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Growers Direct; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give Growers Direct 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 and contact phone

number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Growers Direct as a result of the Client's failure to comply with this clause.

5. Authorised Representative

- 5.1 The Client acknowledges that Growers Direct shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Growers Direct, that person shall have the full authority of the Client to order any Goods, Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to Growers Direct for all additional costs incurred by Growers Direct (including Growers Direct's profit margin) in providing any Goods, Services or variation/s requested thereto by the Client's duly authorised representative.

6. Price and Payment

- 6.1 At Growers Direct's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Growers Direct to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to Growers Direct's current price list; or
 - (c) Growers Direct's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Growers Direct reserves the right to change the Price
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to site accessibility, availability of machinery, safety considerations, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, obscured site defects, change to the design, availability of plants, existing soil conditions of the planting area, size of area to be planted, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring underground etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Growers Direct in the cost of labour or Goods (including the increase in overseas transactions as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Growers Direct's control.
- 6.3 Variations will be charged for on the basis of Growers Direct's quotation and where applicable shall be at Growers Direct's current hourly rate, and will be detailed in writing, and shown as variations on Growers Direct's invoice. The Client shall be required to respond to any variation submitted by Growers Direct within ten (10) working days. Failure to do so will entitle Growers Direct to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Growers Direct, which may be:
- (a) on delivery of the Goods;
 - (b) on completion of the Services for minor jobs;
 - (c) by way of instalments/progress payments in accordance with Growers Direct's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Growers Direct.
- 6.5 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18 of the Construction Contracts Act 2002.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Growers Direct.
- 6.7 Growers Direct may in its discretion allocate any payment received from the Client towards any invoice that Growers Direct determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Growers Direct may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Growers Direct, payment will be deemed to be allocated in such manner as preserves the maximum value of Growers Direct's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 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 Growers Direct nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by Growers Direct is a claim made under the Construction Contracts Act 2002.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Growers Direct an amount equal to any GST Growers Direct must pay for any supply by Growers Direct under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery

- 7.1 Subject to clause 7.2 it is Growers Direct's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Growers Direct claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Growers Direct's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Growers Direct that the site is ready.

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- 7.3 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 7.4 At Growers Direct's sole discretion the cost of delivery is either included in the Price or is in addition to the Price and which may include, but not limited to site visit attendance and travel costs incurred by Growers Direct.
- 7.5 Growers Direct may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 The Client shall take delivery of the bulk volume or quantity 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.
- 7.7 Any time specified by Growers Direct for delivery of the Goods is an estimate only and Growers Direct will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Growers Direct is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Growers Direct shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 8.1 If Growers Direct retains ownership of the Goods under clause 15 then:
- (a) where Growers Direct is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Goods at Growers Direct's address; or
 - (ii) the Goods are delivered by Growers Direct or Growers Direct's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Growers Direct is to both supply and install Goods then Growers Direct shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests Growers Direct to leave Goods outside Growers Direct's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 8.3 Growers Direct reserves the right not to clean the site if animal faeces or other contaminants could cause a health issue for Growers Direct's employees.
- 8.4 Growers Direct shall be entitled to rely on the accuracy of any plans, specifications, geotech or other reports and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Growers Direct accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, reports or other information.
- 8.5 The Client accepts and acknowledges that shrubs, plants, natural turf and any other flora, foliage or vegetation supplied by Growers Direct are organic in nature and require care and maintenance. Growers Direct reserves the right to not accept liability for the plants where such plants may have become affected or died due to the Client's failure to properly maintain the plants and/or to follow any instructions or guidelines provided by Growers Direct in regard to the proper care of the plants (including but not limited to, adequate watering of the plants).
- 8.6 As strict control cannot be exercised over conditions influencing plant responses (including, without limitation, weather, plant and soil conditions, rodents, etc.) Growers Direct accepts no responsibility or liability for any failure in performance. The Client assumes all responsibility for the correct selection of the Goods.
- 8.7 The Client accepts that plant selection shall be the Client's responsibility based on their skill and judgement. Whilst Growers Direct may provide general advice, any site specific advice including, but not limited to plant placement, may attract an additional fee. Furthermore, Growers Direct shall accept no liability for wrongly positioned or incorrectly planted Goods.
- 8.8 *Design Risk*
- (a) Preliminary designs are supplied at the rate quoted. Should the Client however require a more detailed plan and specifications for use of any third party, Growers Direct shall charge the additional work required at Growers Direct's standard hourly rate.
 - (b) Growers Direct shall liaise with the Client through the preparation of the concept plan, the master plan and the planting plan.
 - (c) The Client acknowledges that any designs, plans or schedules prepared by Growers Direct have been prepared taking into account the Client's particular instructions and requirements and that the designs, plans and/or schedules are for the private and confidential use of the Client. The designs, plans and/or schedules shall not be reproduced in whole or in part nor relied upon by any third parties for any use whatsoever without the express authority of Growers Direct as per clause 21.1.
 - (d) The Client accepts that changes to the design provided by Growers Direct and approved by the Client which are requested after commencement of the construction Services, Growers Direct reserves the right to charge for such changes to the design as a variation.
 - (e) Growers Direct shall accept no duty or responsibility (including in negligence) and disclaims all liability of any nature whatsoever to any third party that makes use of the plans without the express authority of Growers Direct or who uses the plans in a manner that is outside of the purpose for which the plans were originally prepared.
- 8.9 *Landscaping Risk*
- (a) Where the Client has provided instructions or specifications for Growers Direct to complete the Services that have not been prepared by Growers Direct (including, but not limited to, any requested variation to the original design), then Growers Direct shall accept no liability whatsoever for the finished Services being deemed as unsatisfactory to the Client.
 - (b) The Client warrants that any structures (where applicable) to which the Goods are to be affixed are able to withstand the installation of the Goods and that are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos) that Growers Direct, or employees of Growers Direct, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Growers Direct shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 7.2 above) until Growers Direct is satisfied that it is safe for the installation to proceed.

- (c) Where the Client has supplied goods for Growers Direct to complete the Services, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. Growers Direct shall not be responsible for any defects in the goods, any loss or damage to the Services (or any part thereof), howsoever arising from the use of goods supplied by the Client.
 - (d) The Client acknowledges that Goods supplied may:
 - (i) fade or change colour over time; and
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
 - (e) Whilst Growers Direct will take all due care during installation Growers Direct will not accept any responsibility for tiles or pavers damaged during installation.
 - (f) Natural products (including, but not limited to timber, stone, kiln fired products, concrete, etc.) may exhibit variations in texture, shade, colour, shading, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Growers Direct will make every effort to match sales samples to the finished Goods, Growers Direct accepts no liability whatsoever where such or any variances between batches supplied or other samples differ to the finished Goods supplied.
 - (g) Timber is a hygroscopic material subject to expansion and contraction, therefore Growers Direct will accept no responsibility for gaps that may appear in the timber during prolonged dry periods.
 - (h) Where applicable, Growers Direct gives no guarantee (expressed or implied) against optical hazing, crazing, cracking, chipping or scratching that may occur that is beyond Growers Direct's control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
 - (i) If the Client orders an insufficient number of tiles, then Growers Direct will take no responsibility for any variation of colour in further batches supplied to the Client or the inability to supply Goods at all.
 - (j) Growers Direct will accept no responsibility for tiles that have already been affixed.
 - (k) The gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Services such as:
 - (i) hairline cracking of paving and grout; or
 - (ii) damage caused by contact with chemicals, solvents, oils or any other substances; or
 - (iii) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
 - (l) The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
 - (m) Growers Direct shall not be liable for any defect in the Services if the Client does not follow Growers Direct's recommendations, including:
 - (i) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
 - (ii) that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
 - (iii) that no heavy furniture is to be placed on the concrete area for a minimum of seven (7) days.
 - (n) The Client shall supply an area suitable for washing out Growers Direct's equipment and for disposing all unused concrete and slurry.
 - (o) The Client must disclose to Growers Direct if the site or any adjoining property is classified as having BioGrow, organic or other certification and accepts that spray and weed control methods or products may be limited in accordance with the requirements pertaining to those certification requirements.
 - (p) The Client acknowledges that Growers Direct shall take due care in spraying the specified area, however the Client accepts that in some circumstances and atmospheric conditions that spray drift may result in some damage to the peripheral area.
- 8.10 *Tree Work Risk*
- (a) It is the Client's responsibility to ensure swimming pools and fish ponds are adequately covered prior to commencement of the Services. Growers Direct accepts no liability to damage caused to swimming pools and fish ponds due to the debris created in undertaking the Services.
 - (b) Growers Direct will carry out the work using reasonable care and diligence to avoid any unnecessary damage to any part of the property of anything connected therewith but the Client accepts the risk that by reason of the nature of the work some reasonably unavoidable damage may occur and Growers Direct will not be responsible in that regard.
 - (c) It is acknowledged between the parties that Growers Direct will carry out in a reasonable way the clean up after the work has been completed with the removal of any debris, but it is acknowledged between the parties that it is unreasonable for such clean up and/or removal of such debris to restore the property to its pre-existing condition. Some debris will remain, which will be the Client's responsibility.
 - (d) Growers Direct reserves the right to refuse to continue to complete the Services in the event that Growers Direct believes the site/trees to be unsafe to either Growers Direct's employees and/or the Client's property. In this event, the Client accepts Growers Direct's right to make safe the site (including but not limited to the hire of a Travel Tower) before Growers Direct will continue the Services. The Client agrees to indemnify Growers Direct against all additional costs incurred in such an event, all additional costs shall be detailed separately at the time of invoicing in accordance with clause 6.2. Growers Direct shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
 - (e) Prior to the commencement of work the Client must advise Growers Direct of all, or any hidden or reasonably unforeseeable defect, danger or problem that may be on or associated with, the site or the proposed work. Failure to do so will leave the Client responsible for any damage to the site, or harm caused to Growers Direct, that may arise.
 - (f) If the danger, defect or problem was not brought to the attention of Growers Direct prior to giving any quotation for the work, and specifically referred to in such quotation, then Growers Direct may add to the final amount payable by the Client for the work, all reasonable expenses arising from such problem.

9. Client's Responsibilities

- 9.1 The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the Services and agrees that Growers Direct shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
- 9.2 The Client shall provide Growers Direct with a suitable free power source and access to water and toilet facilities.
- 9.3 The Client acknowledges and agrees that in the event Growers Direct require access, in order to undertake the Services, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Services. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by Growers Direct in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

10. Care of Goods

- 10.1 Growers Direct may at its discretion notify the Client that it requires to store at the site Goods, equipment, or plant and tools required for the Services, in which event the Client shall supply Growers Direct a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.

11. Access

- 11.1 The Client shall ensure that Growers Direct has clear and free access to the site at all times to enable them to undertake the Services. Growers Direct 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 Growers Direct.
- 11.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by Growers Direct.

12. Underground Locations

- 12.1 Prior to Growers Direct commencing any work the Client must advise Growers Direct of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst Growers Direct will take all care to avoid damage to any underground services the Client agrees to indemnify Growers Direct 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 12.1.

13. Compliance with Laws

- 13.1 The Client and Growers Direct shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses, resource consents and approvals that may be required for the Services.
- 13.3 The Client agrees that the site will comply with any WorkSafe guidelines and the Health and Safety at Work Act 2015 (the "HSW Act") relating to building/construction sites and any other relevant safety standards or legislation. Furthermore, Growers Direct has not and will not at any time assume any obligation as the Client's agent or otherwise which may be imposed upon the Client from time to time pursuant to the HSW Act arising out of the engagement. The parties agree that for the purposes of the HSW Act, Growers Direct shall not be the person who controls the place of work in terms of the HSW Act.

14. Insurance

- 14.1 Growers Direct shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

15. Title

- 15.1 Growers Direct and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Growers Direct all amounts owing to Growers Direct; and
 - (b) the Client has met all of its other obligations to Growers Direct.
- 15.2 Receipt by Growers Direct 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.
- 15.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 15.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Growers Direct on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Growers Direct and must pay to Growers Direct the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Growers Direct and must pay or deliver the proceeds to Growers Direct on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Growers Direct and must sell, dispose of or return the resulting product to Growers Direct as it so directs;
 - (e) the Client irrevocably authorises Growers Direct to enter any premises where Growers Direct believes the Goods are kept and recover possession of the Goods;
 - (f) Growers Direct may recover possession of any Goods in transit whether or not delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Growers Direct;

- (h) Growers Direct may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

16. Personal Property Securities Act 1999 (“PPSA”)

- 16.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to Growers Direct for Services – that have previously been supplied and that will be supplied in the future by Growers Direct to the Client.
- 16.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Growers Direct may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Growers Direct for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Growers Direct; and
 - (d) immediately advise Growers Direct 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.
- 16.3 Growers Direct and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 16.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 16.5 Unless otherwise agreed to in writing by Growers Direct, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 16.6 The Client shall unconditionally ratify any actions taken by Growers Direct under clauses 16.1 to 16.5.
- 16.7 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of Growers Direct 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).
- 17.2 The Client indemnifies Growers Direct from and against all Growers Direct's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Growers Direct's rights under this clause.
- 17.3 The Client irrevocably appoints Growers Direct and each director of Growers Direct as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

18. Defects

- 18.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Growers Direct of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Growers Direct 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 Growers Direct has agreed in writing that the Client is entitled to reject, Growers Direct's liability is limited to either (at Growers Direct's discretion) replacing the Goods or repairing the Goods.
- 18.2 Goods will not be accepted for return other than in accordance with 18.1 above, and provided that:
- (a) Growers Direct has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) Growers Direct will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 18.3 Subject to clause 18.1, non-stocklist items, or Goods ordered or made to the Client's specifications are not acceptable for credit or return.

19. Warranty

- 19.1 For Goods not manufactured by Growers Direct, the warranty shall be the current warranty provided by the manufacturer of the Goods. Growers Direct 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.
- 19.2 To the extent permitted by statute, no warranty is given by Growers Direct as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Growers Direct shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

20. Consumer Guarantees Act 1993

- 20.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Growers Direct to the Client.

21. Intellectual Property

- 21.1 Where Growers Direct has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Growers Direct. The Client shall be entitled to use them only for the agreed scope of Services and the purpose for which they are intended. The ownership of factual data and information collected by Growers Direct and paid for by the Client shall, after full payment, shall lie with the Client. The Client may reproduce drawings, specifications and other documents in which

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- Growers Direct has copyright as reasonably required in connection with the project for which the Services are retained but not otherwise. The Client shall have no such rights where any fees and/or expenses due to Growers Direct have not been paid in accordance with this Contract.
- 21.2 Growers Direct shall reserve the right to charge a licence fee for any plan designed by Growers Direct for the Client and subsequently used by any third party.
- 21.3 The Client warrants that all designs, specifications or instructions given to Growers Direct will not cause Growers Direct to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Growers Direct against any action taken by a third party against Growers Direct in respect of any such infringement.
- 21.4 The Client agrees that Growers Direct may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Growers Direct has created for the Client.
- 22. Default and Consequences of Default**
- 22.1 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 a half percent (2.5%) per calendar month (and at Growers Direct's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes Growers Direct any money the Client shall indemnify Growers Direct from and against all costs and disbursements incurred by Growers Direct in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Growers Direct's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies Growers Direct may have under this Contract, if a Client has made payment to Growers Direct, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Growers Direct under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 22.4 Without prejudice to Growers Direct's other remedies at law Growers Direct shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Growers Direct shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Growers Direct becomes overdue, or in Growers Direct's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Growers Direct;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 23. Cancellation**
- 23.1 Without prejudice to any other rights or remedies Growers Direct may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice(s) then Growers Direct may suspend the Services immediately. Growers Direct will not be liable to the Client for any loss or damage the Client suffers because Growers Direct has exercised its rights under this clause.
- 23.2 Growers Direct 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 Growers Direct shall repay to the Client any money paid by the Client for the Goods. Growers Direct shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Growers Direct as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.4 Cancellation of orders for Goods will definitely not be accepted once production has commenced, or an order has been placed for:
- (a) Goods made to the Client's specifications; or
 - (b) for non-stocklist items; or
 - (c) specially ordered pots or water feature orders being sourced from overseas suppliers.
- 24. Privacy Policy**
- 24.1 All emails, documents, images or other recorded information held or used by Growers Direct is Personal Information as defined and referred to in clause 24.3 and therefore considered confidential. Growers Direct acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Growers Direct acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Growers Direct that may result in serious harm to the Client, Growers Direct will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to Growers Direct in respect of Cookies where transactions for purchases/orders transpire directly from Growers Direct's website. Growers Direct agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Growers Direct when Growers Direct sends an email to the Client, so Growers Direct may collect and review that information ("collectively Personal Information")

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- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Growers Direct's website.
- 24.3 The Client authorises Growers Direct or Growers Direct's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Growers Direct from the Client directly or obtained by Growers Direct from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 24.4 Where the Client is an individual the authorities under clause 24.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 24.5 The Client shall have the right to request Growers Direct for a copy of the Personal Information about the Client retained by Growers Direct and the right to request Growers Direct to correct any incorrect Personal Information about the Client held by Growers Direct.
- 25. Suspension of Services**
- 25.1 Where the Contract is subject to the Construction Contracts Act 2002, the Client hereby expressly acknowledges that:
- (a) Growers Direct has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 6.4 and/or any subsequent amendments or new legislation and no payment schedule has been given by the Client; or
 - (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Growers Direct by a particular date; and
 - (iv) Growers Direct has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction Contract.
 - (b) if Growers Direct suspends work, it:
 - (i) is not in breach of the Contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the Contract; and
 - (iv) keeps its rights under the Contract including the right to terminate the Contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if Growers Direct exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to Growers Direct under the Contract and Commercial Law Act 2017; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Growers Direct suspending work under this provision;
 - (d) due to any act or omission by the Client, the Client effectively precludes Growers Direct from continuing the Services or performing or complying with Growers Direct's obligations under this Contract, then without prejudice to Growers Direct's other rights and remedies, Growers Direct may suspend the Services immediately after serving on the Client a written notice specifying the payment default or the act, omission or default upon which the suspension of the Services is based. All costs and expenses incurred by Growers Direct as a result of such suspension and recommencement shall be payable by the Client as if they were a variation.
- 25.2 If pursuant to any right conferred by this Contract, Growers Direct suspends the Services and the default that led to that suspension continues un-remedied subject to clause 23.1 for at least ten (10) working days, Growers Direct shall be entitled to terminate the Contract, in accordance with clause 23.
- 26. Service of Notices**
- 26.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by email to the other party's last known email address.
- 26.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 27. Trusts**
- 27.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Growers Direct may have notice of the Trust, the Client covenants with Growers Direct as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Growers Direct (Growers Direct will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;