

TERMS AND CONDITIONS OF SALE

“**Palm Place**” means Rock Werx Pty Ltd trading as Palm Place Nursery (ABN 66475204026) and all related entities or assigns;

“**Contract**” means the contract referred to in Clause 2

“**Customer**” means the person or entity acquiring or offering to acquire Products from Palm Place and where there is more than one Customer, the Customer’s covenants and obligations are joint and several;

“**Products**” means all products supplied or to be supplied by Palm Place to the Customer.

“**Conditions**” means these Terms and Conditions of sale as amended, altered or varied by Palm Place in writing from time to time.

NO REFUNDS, NO RETURNS, NO EXCHANGE

1. APPLICATION OF CONDITIONS

Unless otherwise agreed in writing by Palm Place, these Conditions will apply to all quotations, orders and offers in relation to the Products and the sale, supply and replacement of all Products and will take precedence over any inconsistent provisions in any Customer order.

2. ORDERS AND CONTRACT

2.1 Each order by a Customer is subject to acceptance or rejection by Palm Place and is not binding on Palm Place prior to Palm Place’s acceptance of it. Palm Place’s written acceptance of an order and these Conditions will constitute the entire agreement of the parties in relation to the subject of that order (“Contract”) and may only be varied in writing signed by the parties. No order may be cancelled after acceptance by Palm Place without Palm Place’s prior written consent.

2.2 Cancellation of an order by the customer after Palm Place’s written acceptance of the same and without Palm Place’s prior written consent will result in the Customer having to pay the full amount of the order.

3. PRICES

3.1 Prices quoted by Palm Place for the Products will apply for a period of 14 days from the date of quotation subject to Palm Place’s right to make any changes necessary to correct errors or allow for increases in the cost of labour, materials, freight or insurance and tax as imposed by any competent Government Authority, taking effect prior to the date of delivery.

3.2 The quoted price is exclusive of all taxes, duties and charges of any kind, which may be added to the price at Palm Place’s option.

4. DESCRIPTION OR SAMPLE

Any description or sample of Products given by Palm Place is for identification purposes only and does not constitute the Contract or a sale by description or sample.

5. TITLE AND RISK

5.1 All Products sold are at the risk of the Customer from the time the Products leave Palm Place’s premises. Notwithstanding delivery and the passing of risk, title in the Products will not pass to the Customer until payment in full for those Products has been received by Palm Place, and all cheques and other negotiable instruments have been cleared. Until that time:

- (a) the Products are held by the Customer as fiduciary bailee of Palm Place;
- (b) the Customer must store the Products separately and so that they are readily identifiable as the property of Palm Place; and
- (c) the Customer irrevocably authorises the representatives c/- Palm Place to enter upon the Customer’s premises where the Products are stored, or are thought by Palm Place to be stored, for the purpose of repossessing them and subsequently reselling them.

5.2 The Customer indemnifies Palm Place against any loss or damage arising in relation to the Products prior to title in the Products passing to the Customer.

6. DELIVERY

6.1 Palm Place’s policy is to deliver goods ordered by the Customer at the front of the Customer’s premises. In the event that the Customer specifically requests Palm Place to enter the Customer’s premises to drop off goods ordered, then Palm Place takes no responsibility nor liability for any damage incurred to the Customer’s premises or persons by reason of the delivery.

7. CLAIMS

The Customer will be deemed to have received and accepted the Products in good condition unless Palm Place receives a substantiated written claim as to any defects, damage, shortage, non delivery and other non conformity with the Contract within 7 days from the date of receipt of the Products by the Customer or its representative.

8. PAYMENT

8.1 Credit will be granted at the discretion of Palm Place and the following terms for payment set out in this clause will then apply. Otherwise, cash or bank transfer must be paid for the Products at the time they are delivered to the Customer.

8.2 Payment must be made by the Customer to Palm Place by the due date. Payment must be received within thirty days from the statement date. No discount will be allowed for early payment unless specifically provided on the invoice.

8.3 Payment must be made by the Customer to Palm Place in cash or any other form approved by Palm Place.

8.4 Any payment outstanding after the due date specified in the relevant invoice will without prejudice to any other right or remedy available to Palm Place, incur interest at a rate of 2% per calendar month on the unpaid balance from the due date until the date on which payment in full is received.

8.5 The Customer has no right to set-off payment of any amounts due to Palm Place.

9. DELAY

9.1 Any delivery dates are estimates only and although Palm Place will endeavour to meet these dates, Palm Place will not be liable for any delay in delivery arising from any cause whatsoever. Any failure on the part of Palm Place to deliver within the time stated will not entitle the Customer to repudiate the Contract in whole or in part.

9.2 Without limiting clause 8.1 above, Palm Place will not be under any liability in respect of any delay in delivery arising from any force majeure occurrence not within the reasonable control of Palm Place, including but not limited to industrial or labour disputes, riots, mobs, fires, floods, wars, civil strife, embargoes, shortages of labour, materials, power, fuel or means of transportation, whether affecting Palm Place or any supplier or subcontractor or for circumstances caused by reasons of law, regulations or orders of any government or competent authority. Palm Place may delay its obligations under the

Contract for as long as the force majeure occurrence continues and may make partial delivery to the Customer in proportions that are reasonable under the circumstances.

10. TERMINATION

If:

- (a) the Customer breaches any provision of the Contract or any other contract with Palm Place; or
- (b) the Customer assigns any of its property for the benefit of creditors; or
- (c) the Customer becomes subject to any form of insolvency administration including without limitation, the appointment of a receiver, receiver and manager, liquidator, provisional liquidator or administrator; or
- (d) any step is taken by a mortgagee to exercise its right to take possession of the property of the Customer.

Palm Place may terminate or suspend performance of this Contract or any other contract with the Customer, without further notice to the Customer, may require payment of cash in advance of delivery and will be entitled to payment for any Products already delivered or for work in progress performed in pursuance of the Contract at a reasonable rate. This clause does not limit any other remedy that may be available to Palm Place including compensation for any loss or damage suffered by it.

11. ARBITRATION

Any dispute or difference in connection with the Contract must be submitted to arbitration in accordance with the Arbitrators Australia Rules for the Conduct of Commercial Arbitrations.

12. REPRESENTATIONS

The Customer acknowledges that, other than as expressly set out in the Contract, neither Palm Place nor any person acting Palm Place’s behalf has made any representations or given any promise or undertaking in relation to the storage supply or quality of the Products.

13. AGENT’S WARRANTY

Any person contracting to purchase or purchasing Products on behalf of the Customer warrants and guarantees that he or she has the authority to bind the Customer to the Contract.

14. PRODUCT WARRANTY AND LIABILITY

14.1 Subject to the exceptions specified in clause 13.3. Palm Place warrants that all Products manufactured by Palm Place or its suppliers will be free from defects for 7 days from the date of first delivery unless otherwise advised by Palm Place in writing. If any Product proves to be defective within the period specified in this clause, Palm Place will, at its option and to the exclusion (to the extent permitted by law) of any other remedy.

- (a) replace the defective Product; or
- (b) credit the Customer with such amount as Palm Place in its sole discretion considers reasonable having regard to the price paid for the Product and the circumstances under which it became defective.

14.2 Products replaced will be supplied on the same conditions and with the same warranty (commencing on the date of delivery of the replaced Product) as the original Product.

14.3 This warranty will not apply to any defect resulting from:

- (a) an accident;
- (b) misuse or other unsuitable or unauthorised use of the Product or negligence or error in storing, maintaining or handling the Product or equipment used in association with the Product;
- (c) modifications or changes to the Products without Palm Place’s prior written authorisation; or
- (d) any other unauthorised act or fault by the Customer or a third party.

14.4 Except as provided in the Contract, Palm Place makes no express warranties in respect of the Products. To the extent permitted by law, Palm Place excludes all implied warranties in respect of the Products that would otherwise be implied by law into the Contract.

14.5 To the extent permitted by law, Palm Place excludes all liability for any damage, whether direct, indirect, special or consequential, arising in any way out of the use or in relation to the Products.

14.6 Where the proceeding paragraph is not legally enforceable and to the extent permitted by law, Palm Place’s liability for breach of any warranty or any item implied by law into this Agreement is limited to the cost of replacing the Products or acquiring equivalent Products, whichever is the lower.

15. WAIVER

Any failure by Palm Place to insist on strict compliance with the Contract or any delay by Palm Place in exercising its remedies under the Contract will not constitute a waiver of any provision of the Contract or a waiver of any remedy available to Palm Place.

16. APPLICABLE LAW

The Contract will be governed by and construed in accordance with the laws of Victoria, Australia, and the Customer submits to the jurisdiction of the Courts of Victoria including all courts of appeal.

17. ASSIGNMENT AND SUB-CONTRACTING

Palm Place may assign the Contract and may sub-contract the manufacture and supply of all or any part of the Products to any other person or entity.

18. VARIATION

These Conditions may be varied by Palm Place by giving written notice to the Customer. No variation to these Conditions will be binding unless agreed to in writing by Palm Place.