

PART 3: CREDIT FACILITY TERMS

Term

1. This Credit Agreement commences on the date we accept your completed Credit Application in writing and notify you of your credit limit and continues until such time as it is terminated in accordance with these Credit Facility Terms.
2. The decision to grant you a credit facility is solely at our discretion.

Credit limit

3. Any credit approval limit noted in this Credit Agreement or on any form, invoice, or document issued by us to you is for our convenience only and will not be read as a commitment, promise, or warranty by us to extend any level of credit to you.
4. You are liable to pay all amounts due to us, regardless of whether you have exceeded your credit limit.

No obligation to supply on credit

5. We reserve the right to refuse to supply you with Goods or Services on credit (even if you have not exceeded your credit limit), without having to provide reasons to you for doing so.

Payment terms

6. Until we notify you that you have been granted a credit facility with us, all Goods and Services supplied by us must be paid for on a cash before delivery or performance basis.
7. Where we have granted you a credit facility, the terms of payment are strictly thirty (30) days from the end of month of invoice or the last trading day of the month following the end of month of invoice, whichever falls first (or such other period as nominated by us in writing).
8. If you default in the payment of any money due to us pursuant to these Credit Facility Terms, then in addition to any other rights which may be conferred upon us by law or equity, we will be entitled to charge you interest on such money at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full. For clarity, this rate of interest will also apply to any judgment debt owing by you.
9. Any sums owed to us by you under this Credit Agreement will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever.
10. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

Suspension and cancellation of credit facility

11. We may, without prejudice to any other rights which may be conferred upon us by law or equity, suspend your credit facility by notifying you in writing if you fail to make payment of any monies due to us by the due date for payment or for any other reason in our sole discretion.
12. We reserve the right to close your account without notice to you if you do not use your credit facility for a period of twelve (12) months.

Liability for purchases

13. You are liable for all purchases made using your credit facility. We are not responsible for confirming the authority of persons using your account. You are solely responsible for ensuring there is no unauthorised use of your account.

Retention of title

14. Until such time as you have made payment in full for any Goods supplied by us, and until such time as you have made payment in full of all other money owed to us by you (whether in respect of money payable under a specific contract or on any other account whatsoever):
 - (a) title in the Goods does not pass to you;
 - (b) you agree that property and title in the Goods will not pass to you and we retain the legal and equitable title in those Goods supplied and not yet sold;
 - (c) you will hold the Goods in a fiduciary capacity for us and agree to store the Goods in such a manner that they can be identified as our property, and will not mix the Goods with other similar goods; and
 - (d) you will be entitled to sell the Goods in the ordinary course of your business but will sell as agent and bailee for us and the proceeds of sale of the Goods will be held by you on trust for us absolutely.
15. Your liability to us will not be discharged by the operation of clause 14(d) (but your levels of indebtedness will be reduced by the extent of the funds so remitted to us).
16. You agree that whilst property and title in the Goods remains with us, we have the right, with prior notice to you, to enter upon any premises occupied by you (or any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours) to inspect our Goods and, when payment is overdue, to immediately enter the premises (as your invitee) to repossess the Goods which may be in your possession, custody, or control when payment is overdue.
17. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 16 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
18. You agree that where the Goods have been retaken into our possession, we have the absolute right to sell or deal with the Goods, and if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell such Goods.
19. For the avoidance of doubt, our interest constitutes a 'purchase money security interest' pursuant to the PPS Act.

Personal Property Securities Law

20. You acknowledge that by assenting to this Credit Agreement, which constitutes a security agreement for the purposes of the PPS Act, you grant us a security interest in all Goods (and their proceeds) now or in the future supplied by us to you (or to your account).
21. You undertake to do anything that is required by us:
 - (a) so that we can acquire and maintain one or more perfected security interests under the PPS Act in respect of the Goods (and their proceeds);
 - (b) to register a financing statement or financing change statement; and
 - (c) to ensure that our security position, and rights and obligations, are not adversely affected by the PPS Act.
22. Unless you have obtained our prior written consent, you undertake not to:
 - (a) register a financing change statement in respect of a security interest contemplated or constituted by this Credit Agreement; and
 - (b) create, or purport to create, any security interest in the Goods, nor 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.
23. You:
 - (a) waive your right under section 157 of the PPS Act to receive a copy of the verification statement relating to a security interest contemplated or constituted by this Credit Agreement;

- (b) agree that to the extent permitted by the PPS Act, the following provisions of the PPS Act will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

- (c) agree that the following provisions of the PPS Act will not apply and you will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
24. You agree that you will, if requested by us, sign any documents, provide any information, or do anything else we request, to ensure that any security interest created in our favour by this Credit Agreement is, to the fullest extent possible under the PPS Act, perfected in accordance with Part 2.2 of the PPS Act.
 25. Notwithstanding section 275 of the PPS Act, the Parties agree to keep confidential all information of the kind referred to in section 275 of the PPS Act, unless compelled by law to disclose such information.
 26. You irrevocably grant to us the right to enter upon your property or premises, with notice, and without being in any way liable to you or to any third party, if we have cause to exercise any of our rights under sections 123 or 128 of the PPS Act, and you will be liable for and indemnify us from and against any claims made by any third party as a result of such exercise.
 27. You will be responsible for our costs and expenses (including legal costs, on a full indemnity basis) in exercising our rights under clause 26 where you are otherwise in default of this Credit Agreement. Where we exercise any power to enter the premises, that entry will not give rise to any action of trespass or similar action on your part against us, or our employees, servants, or agents.
 28. You agree to accept service of any document required to be served, including any notice under this Credit Agreement or the PPS Act or any originating process, by prepaid post at any address nominated in this Credit Agreement or any other address later notified to us by you or your authorised representative.
 29. You further agree that where we have rights in addition to those under Part 4 of the PPS Act, those rights will continue to apply.

Charge over property

30. You charge in our favour all of your estate and interest in any real property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now owing or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
31. You charge in our favour all of your estate and interest in any personal property, whether held in your own right or as capacity as trustee, you own at present and in the future with payment of all monies which are now owing or in the future become owing to us whether pursuant to this Credit Agreement or otherwise until all such monies are paid in full by you.
32. As security for the payment of the amount of your indebtedness to us from time to time, you irrevocably appoint as your duly constituted attorney our company secretary from time to time to execute in your name and as your act and deed any real property mortgage, bill of sale or consent to any caveat we may choose to lodge against real property that you may own in any Land Titles Office in any state or territory of Australia (even though you may not have defaulted in carrying out your obligations hereunder) upon written notice and demand to you (in the event that there is no default by you in carrying out its obligations hereunder).
33. Where you have previously entered into an agreement with us by which you have granted a charge, mortgage, or other security interest (including a security interest as defined in the PPS Act) over or in respect of real or personal property, those charges, mortgages, or other security interests and the terms which directly or indirectly create rights, powers, or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Credit Agreement and will secure all of your indebtedness and obligations hereunder. We may, at our election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.

Provision of further information

34. You undertake to comply with any reasonable written requests made by us from time to time to provide us with further documents and information we may require for the purpose of assessing your creditworthiness.
35. If you are a corporation (with the exception of a public listed company), you must advise us of any alteration to your corporate structure (for example, by changing directors, shareholders, or your constitution). In the case of a change of directors or shareholders, we may ask for your directors to sign a guarantee and indemnity.

Corporations

36. If you are a corporation, you warrant and represent to us that all of your directors have signed this Credit Agreement.

Partnerships

37. If you enter into this Credit Agreement in your capacity as a partnership, you warrant and represent to us that all partners have signed this Credit Agreement.
38. If you are a partnership, you must not alter your partnership (for example, adding or removing partners or altering its partnership agreement) without notifying us in writing.

Trustees

39. If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:
 - (a) you enter into this Credit Agreement in both your capacity as trustee and in your personal capacity;
 - (b) you have the right to be reasonably indemnified out of trust assets;
 - (c) you have the power under the trust deed to sign this Credit Agreement; and
 - (d) you will not retire as trustee of the trust or appoint any new or additional trustee without advising us and having the new or additional trustee sign an agreement on substantially the same terms as this Credit Agreement.
40. You must give us a copy of the trust deed upon request.

Insolvency

41. If you become insolvent, to the extent permitted by law, you remain liable under this Credit Agreement for payment of all liabilities incurred hereunder. You remain liable under this Credit Agreement even if we receive a dividend or payment as a result of you being insolvent.

Indemnity

42. You are liable for and indemnify us from and against any liability, claims, damages, losses, costs, and expenses whatsoever (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, arising out of, or in connection with, any default by you in the performance or observance of your obligations under this Credit Agreement.
43. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives termination of this Credit Agreement.
44. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred upon us by this Credit Agreement.

Costs

45. You are responsible for your own legal, accounting, and business costs in connection with the execution of this Credit Agreement. You must also pay for all stamp duty and other taxes payable on this Credit Agreement (if any).
46. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

Application of payments

47. Subject to clauses 48 and 49, payments by, or on behalf of, you will be applied by us as follows.
- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 17, 27, 42, and 46.
- (b) Secondly, in payment of any interest incurred in accordance with clause 8.
- (c) Thirdly, in payment of any outstanding Tax Invoices (or part thereof) in an order determined by us in our sole discretion.
48. To the extent that payments have been allocated to Tax Invoices by us in our business records, we may allocate or retrospectively reallocate payments in any manner whatsoever at our absolute discretion, including in a manner inconsistent with clause 47 herein.
49. Payments allocated (or reallocated) under clause 47 or 48 will be treated as though they were allocated (or reallocated) in the manner determined by us on the date of receipt of payment.

Notices

50. A notice or other communication connected with this Credit Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, a notice or other communication may be sent by pre-paid post to the address of the addressee as set out in this Credit Agreement, or sent by email or fax to the email or fax number of the addressee.

Termination

51. If:
- (a) a Party commits a material breach of this Credit Agreement and fails to remedy that breach within seven (7) days of receiving notice from the other Party requiring it to do so; or
- (b) an Insolvency Event occurs in relation to a Party, then the other Party may terminate this Credit Agreement by written notice to that Party, in which case this Credit Agreement will terminate immediately.
52. Each Party expressly waives any rights it may have to terminate this Credit Agreement other than as contemplated by clause 51.
53. Each Party acknowledges that the other Party may terminate this Credit Agreement under clause 51 without considering the impact of the termination on the other Party.
54. On termination of this Credit Agreement, accrued rights of a Party are not affected.

Assignment

55. Neither Party may assign, transfer, or novate its rights or obligations under this Credit Agreement without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

Waiver

56. A waiver of any provision or breach of these Credit Facility Terms will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of these Credit Facility Terms, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

Severance

57. If any provision of these Credit Facility Terms is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these Credit Facility Terms. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

Variation of Credit Facility Terms

58. Any proposed variation to these Credit Facility Terms by you must be requested in writing and we may refuse any such request without providing reasons to you for doing so.
59. For clarity, no proposed variation of these Credit Facility Terms will be binding upon us, unless varied in writing and agreed by an authorised officer of ours. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.
60. You agree that these Credit Facility Terms may be amended by an authorised officer of ours at any time by written notice to you. Subject to clause 61, after fourteen (14) days of receipt of the written notice of the amendments, the amendments will be deemed agreed by you.
61. If you do not agree with the amendments proposed by us, you must notify us in writing, within fourteen (14) days from receipt of the written notice, that the amendments are not agreed to. We will then be at liberty to suspend your credit facility until such time as an agreement can be reached.

Governing law

62. You acknowledge and agree that this Credit Agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.
63. The Parties to this Credit Agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

Entire agreement

64. This Credit Agreement constitutes the entire agreement and understanding between the Parties in relation to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of this Credit Agreement are merged in this Credit Agreement and are of no further effect. No oral explanation or information provided by a Party to another affects the meaning or interpretation of this Credit Agreement or constitutes any collateral agreement, warranty, or understanding.
65. Notwithstanding clause 64, in circumstances where there is a pre-existing written credit agreement ("**Original Agreement**") between the Parties, this Credit Agreement will constitute a variation of the Original Agreement whereby the terms and conditions of the Original Agreement are deleted and replaced with this Credit Agreement, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by this Credit Agreement, in which case they will co-exist with this Credit Agreement, and, to the extent of any inconsistency, this Credit Agreement will prevail.

Definitions

66. Unless the contrary intention appears, in these Credit Facility Terms:
- "**Credit Agreement**" means the Application for Commercial Credit, the Privacy Statement, these Credit Facility Terms, the National Credit Declaration, and the Terms of Trade.
- "**Credit Facility Terms**" means these credit facility terms.
- "**Customer**," "**you**," "**your**" means the person acquiring Goods or Services from us, as described in Part 1 of this Credit Agreement.

"**Goods**" means all goods supplied by us to you (and where the context so permits includes any supply of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

"**Government Authority**" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental, or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"**Greenstock**," "**we**," "**us**," "**our**" means Greenstock Nurseries Pty Ltd ACN 010 688 356.

"**GST**" has the meaning given to it by the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Insolvency Event**" means any of the following events concerning a Party, unless the events take place as part of a solvent reconstruction, amalgamation, merger, or consolidation on terms approved by the other Party before it takes place and the implementation of the reconstruction, amalgamation, merger, or consolidation complies with the terms of the approval:

- (a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to, or over, any of the property or undertaking of the Party;
- (b) if the Party becomes bankrupt;
- (c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Party;
- (d) if the Party's property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX of the *Bankruptcy Act 1966* (Cth);
- (e) the Party is unable to pay its debts when they become due and payable;
- (f) if the Party ceases to carry on business; or
- (g) if any event happens in Australia or any other country or territory in respect of a Party that is similar to any of the events or circumstances referred to in this definition.

"**Parties**" means Greenstock and the Customer, and "**Party**" means either one of them.

"**PPS Act**" means the *Personal Property Securities Act 2009* (Cth).

"**Services**" means all services supplied by us to you (and where the context so permits includes any supply of Goods).

"**Tax Invoice**" has the meaning given to this expression by the GST Act.

"**Terms of Trade**" means our terms of trade.

Interpretation

67. If there is any conflict or inconsistency between any of the documents which comprise this Credit Agreement, it is expressly agreed the order of precedence will be (in descending order of precedence):
- (a) these Credit Facility Terms; and
- (b) our Terms of Trade.
68. Unless the contrary intention appears, a reference to:
- (a) this Credit Agreement or another document includes any variation or replacement of it, notwithstanding any change in the identity of the Parties;
- (b) the singular includes the plural and vice versa;
- (c) "right" includes a benefit, remedy, authority, discretion, or power;
- (d) "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten (e.g. computer software or programs, concepts, data, plans, reports, drawings, specifications, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets);
- (e) "person" includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
- (f) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a party by novation) and assigns; and
- (g) any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
69. Headings are for convenience only and will not affect the interpretation of these Credit Facility Terms.
70. Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
71. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
72. Where two or more persons are defined as a Party in these Credit Facility Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
73. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
74. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties must be in the English language.

PART 5: TERMS OF TRADE

Application of Terms

1. These Terms set out the contractual basis upon which we agree to supply you with Goods and apply whenever Goods are quoted for, sold, or supplied by us to you.
2. Any terms or conditions included in, attached to, or referenced in your Order, or any other document provided by you (including any purchase order terms subsequently given to us by you) deviating from, or inconsistent with, these Terms are expressly rejected by us and will not vary or supplement these Terms.
3. Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.
4. Where we have granted you a credit facility, our Credit Facility Terms apply. In the event of any conflict or inconsistency between these Terms and our Credit Facility Terms, our Credit Facility Terms prevail to the extent of the conflict or inconsistency.

Quotations

5. Quotations made by us are estimates only and will not be construed as an offer or obligation to supply any Goods to you.
6. Unless stated otherwise, quotations made by us:
 - (a) are exclusive of GST;
 - (b) are exclusive of the costs of delivery; and
 - (c) will remain valid for a period of thirty (30) days from the date of quotation.
7. You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.
8. We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 11.

Formation of Contract

9. You may accept these Terms (and you will be deemed to accept these Terms) if you, following receipt of a copy of these Terms:
 - (a) confirm your acceptance of these Terms; or
 - (b) place an Order with us.
10. We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to supply you with any Goods at any time.
11. Any Order placed by you will be construed as an offer. A binding Contract will only come into existence, if:
 - (a) we communicate our acceptance of your Order, whether in writing or by electronic means; or
 - (b) we supply you with any Goods following receipt of your Order.
12. For clarity, a Contract is formed at the location of ours where your Order is placed.

Backorders

13. If, for whatever reason, we do not have sufficient stock to satisfy your Order, we reserve the right to:
 - (a) place such Goods on back-order and deliver such Goods when they are in stock; or
 - (b) cancel your Order upon written notice to you.
14. We will, at our discretion, fulfil all backorders, unless otherwise notified by you in writing.

Price and payment terms

15. Subject to clause 16, the Price payable for the Goods will be in accordance with our then prevailing price list (as notified by us to you from time to time), as applicable as at the date of your Order.
16. Where we have issued you a quotation, the Price will be our quoted price (subject to clauses 6 and 26 to 29) which will be binding on us provided you accept our quotation in writing within the period it is valid for acceptance.
17. Unless we have granted you a credit facility, the terms of payment are strictly cash before delivery.
18. Payment may be made by cash, Electronic Funds Transfer (EFT), Visa, and MasterCard credit cards. We reserve the right to change the payment methods that we accept at any time.
19. You acknowledge that we will be at liberty to charge a payment surcharge for applicable transactions equal to our reasonable cost of acceptance.
20. We reserve the right to require payment of a non-refundable deposit. The amount of the deposit will be specified in our quotation or will be advised by us and will immediately become due and payable upon the formation of a Contract in accordance with clause 11, unless otherwise agreed in writing. For clarity:
 - (a) where we require payment of a deposit, we are under no obligation to supply any Goods to you until the deposit has been received by us in cleared funds; and
 - (b) the deposit will be refundable in circumstances where:
 - (i) you are entitled to a refund under the Australian Consumer Law; or
 - (ii) you terminate a Contract because of our breach.
21. If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "GST Amount") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to us issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
22. You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by us.
23. Any sums owed to us by you will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever.
24. We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

Default

25. If you default in the payment of any money due to us pursuant to any Contract of which these Terms form part by the date specified in our Tax Invoice (including any deposit required by us under clause 20), we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
 - (a) charge you interest on the outstanding amount at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full;
 - (b) require you to pay, in advance, for any Goods (or any part of the Goods) which have not yet been supplied; and
 - (c) suspend or cease the supply of any further Goods to you.

Variations

26. If you request or direct that any Goods be supplied that are not strictly in accordance with our quotation or your Order, then such Goods will constitute a variation.
27. A notice of variation must be submitted by you in writing and is only effective if accepted by us in writing.
28. You understand and agree that:
 - (a) all variations must be agreed in writing prior to the Goods that are the subject of the variation being supplied; and
 - (b) all variations will be, in our discretion, invoiced at the rates specified in our quotation, as specifically quoted, or in accordance with our then prevailing price list.

29. Notwithstanding clauses 26 to 28, and subject to any rights you might have under the *Competition and Consumer Act 2010* (Cth) or any other legislation, we reserve the right to vary the quoted Price, if:
 - (a) the Goods specified in your Order are varied from the Goods specified in our quotation (or are otherwise varied following the formation of a Contract); or
 - (b) otherwise as provided for in these Terms.

Order cancellations

30. You may not cancel an Order (or any part of an Order) once a Contract has been formed, delivery of the Goods cannot be deferred, and Goods ordered cannot be returned, except with our prior written consent, and then only upon terms that you reimburse and indemnify us against all losses we have incurred or may incur as a result of the cancellation, deferral, or return, including third-party supplier restocking fees, cartage, bank charges, other incidental expenses incurred on any part of your Order, and loss of profits.

Delivery

31. Unless our quotation states otherwise, you will be liable for all costs associated with packaging and delivery, including cartage/freight, handling, and other charges. Where you have engaged a carrier to deliver the Goods, you will be also be responsible for the cost of insuring the Goods.
32. You must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
33. You acknowledge and accept that any period or date for delivery stated by us is intended as an estimate only and is not a contractual commitment. We will not in any circumstances be liable for any loss or damage suffered by you or any third party for failure to meet any estimated delivery date.
34. Delivery will be made within Business Hours on Business Days, unless otherwise agreed in writing.
35. Delivery is deemed to occur at the time:
 - (a) you, or any third party on your behalf, collects the Goods from us;
 - (b) the Goods are delivered to the delivery location specified in your Order (or to such other location as otherwise agreed in writing);
 - (c) your nominated carrier takes possession of the Goods, in which event the carrier will be deemed to be your agent.
36. If requested by us, you or your duly authorised representative must sign our delivery docket as confirmation that the Goods ordered by you have been received by you in apparent good order and condition.
37. If delivery of the Goods is deferred:
 - (a) at your request; or
 - (b) due to you being unable to accept delivery of the Goods (for whatever reason), when:
 - (c) (where no date for delivery has been specified by you) we are ready to deliver the Goods;
 - (d) (where a delivery date has been specified by you) the Goods are due to be delivered, then we will be entitled to charge you, and you must pay to us:
 - (e) reasonable storage charges (which will accrue daily until such time as the Goods are delivered); and
 - (f) a charge to re-deliver the Goods (where delivery has previously been attempted).
38. You acknowledge and accept that:
 - (a) we may deliver Goods by instalments and reserve the right to require payment for each separate instalment in accordance with these Terms; and
 - (b) you are not relieved from any obligation arising under these Terms, or any Contract of which these Terms form part, by reason of any delay in delivery, and delay in delivery will not entitle you to rescind the Contract.

Risk

39. Risk of loss or damage to the Goods passes to you upon delivery to you or to your agent or to a carrier commissioned by you in accordance with clause 35.
40. You must insure the Goods for their full replacement value on or before delivery against all losses which may be sustained as a result of the loss, damage, or destruction of the Goods (or any part thereof) by accident, theft, fire, explosion, flood, negligence, and such other insurable causes as may be available and must include us as co-insured.
41. If you request that Goods are to be delivered either to an unattended location, left outside your premises, or left outside our premises for collection, you acknowledge that we may deliver the Goods as requested at your sole risk.

Retention of title

42. Until such time as you have made payment in full for the Goods and until such time as you have made payment in full of all other money owing by you to us (whether in respect of money payable under a specific Contract or on any other account whatsoever) title in the Goods does not pass to you, and you agree that property and title in the Goods will not pass to you, and we retain the legal and equitable title in those Goods supplied and not yet sold.

Returns

43. You must, within seven (7) days of the date of delivery:
 - (a) give us written notice, with particulars, of any claim that the Goods delivered are not in accordance with your Order (including any claim for shortfall, incorrect supply, or damage to the Goods); and
 - (b) provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
 44. If you fail to provide us with notice under clause 43, then to the extent permitted by law, the Goods must be treated as having been accepted by you and you must pay for the Goods in accordance with the Contract.
 45. Unless otherwise agreed in writing, you must pay all costs associated with the return of any Goods (either to us or from us to you or any third party) including freight, insurance, handling, and other charges.
 46. Goods cannot be returned to us without our prior written consent. To the extent permitted by law, Goods that have been specifically produced or procured at your request cannot be returned in any circumstances.
 47. Any return (except for Goods deemed by us to be incorrectly supplied or deemed by us to be defective) will incur a handling and administration charge of 20% of the purchase Price of the returned Goods, unless otherwise agreed in writing.
 48. Goods to be returned to us must be unsoiled, undamaged, packed and wrapped appropriately, and must include all original packaging and documentation.
 49. We accept no liability for any damage that occurs to any Goods in return transit.
- ### Indemnity
50. You are liable for and indemnify us in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, as a result of any default by you in the performance or observance of your obligations under any Contract of which these Terms form part.
 51. Your liability to indemnify us will be reduced proportionally only to the extent that:
 - (a) any negligent act or omission by us or a breach of our obligations under any Contract of which these Terms form part has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or
 - (b) these Terms make us specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of, or damage to the Goods.
 52. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the performance or termination of any Contract of which these Terms form part.
 53. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred by these Terms.

Nature of relationship

54. For the removal of doubt, nothing in these Terms, or any Contract of which these Terms form part, is to be construed as giving rise to a relationship of agency, partnership, joint venture, trust, or other relationship with duties or incidents different from those of parties to an arm's-length contract.

Limitation of liability

55. We will not be liable for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of you to us from time to time.
56. Subject to clauses 55, 57, 58, and 60, our liability for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage in connection with that Contract.
57. The limitation contemplated in clause 56 is an aggregate limit for all claims, whenever made.
58. Subject to clause 60, we are not liable for any Excluded Loss, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part.
59. For clarity, and without limiting clauses 55 to 58, the Parties agree that clauses 55 to 58 are to apply in connection with a breach of a Contract, anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
60. If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Goods or Services supplied in connection with any Contract of which these Terms form part and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 55 to 58 do not apply to that liability and instead our liability for such failure is limited to, in the case of a supply of Goods, us replacing the Goods or supplying equivalent Goods, or in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.

Termination of Contract

61. We may, with immediate effect, terminate any Contract of which these Terms form part by written notice to you, if:
- you fail to make payment of any amount owed to us as and when due (including any deposit required by us under clause 20);
 - you commit a material or persistent breach of these Terms and do not remedy the breach within seven (7) days of receipt of a notice identifying the breach and requiring its remedy; or
 - we are no longer able to, for whatever reason, supply the Goods (or any part of the Goods).
62. For clarity, termination of any Contract of which these Terms form part will not affect the rights which have already accrued to a Party at the time of termination, whether under that Contract or otherwise.

Costs

63. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.

Force majeure

64. We are not liable to you for any delay or failure to perform any obligation under any Contract of which these Terms form part if such delay or failure to perform is due to a Force Majeure Event.

Variation of Terms

65. No variation of these Terms, or any Contract of which these Terms form part, requested by you will be effective, unless varied in writing and agreed between the Parties. Clerical errors (such as spelling mistakes, grammatical errors, or numerical errors) may be subject to correction by us without notification.
66. We may amend these Terms by notifying you in writing. The amended Terms will apply to any Order placed by you following us notifying you of the amendments.

Assignment

67. Neither Party may assign, transfer, or novate its rights or obligations under any Contract of which these Terms form part without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).

Waiver

68. A waiver of any provision or breach of these Terms, or any Contract of which these Terms form part, will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of a Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.

Severance

69. If any provision of these Terms, or any Contract of which these Terms form part, is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.

Entire agreement

70. Subject to clause 4, the Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are of no further effect. No oral explanation or information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.

Governing law

71. These Terms, and any Contract of which these Terms form part, will be governed by and construed in accordance with the laws of Queensland, and the laws of the Commonwealth of Australia in force in Queensland.
72. The Parties submit to the non-exclusive jurisdiction of the courts of Queensland, and the relevant federal courts and courts competent to hear appeals from those courts.

Definitions

73. Unless the contrary intention appears, in these Terms:

- "**Australian Consumer Law**" means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- "**Business Day**" means a day that is not a Saturday, Sunday, or public holiday in the location where the Goods are supplied.
- "**Business Hours**" means 08:00am to 5:00pm.
- "**Contract**" means a contract for the supply of Goods, as constituted by our quotation (if any), your Order, and these Terms.
- "**Credit Facility Terms**" means our credit facility terms, as set out in the credit agreement executed by you (where applicable).
- "**Customer**," "**you**," "**your**" means the corporation, partnership, person, or other entity acquiring Goods or Services from us.
- "**Excluded Loss**" means any:
- consequential loss;
 - loss of revenues;
 - loss of reputation;
 - loss of goodwill;
 - loss of profits;
 - loss of bargain;
 - indirect loss;
 - special loss;
 - lost opportunities, including opportunities to enter into arrangements with third parties;
 - loss or damage in connection with claims against you by third parties; or
 - loss or corruption of data.

"**Force Majeure Event**" means any act of God, acts, decrees, or regulations of Government Authorities, casualty, fire, explosion, storm, flood, frost or snow, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond our reasonable control.

"**Goods**" means all goods supplied by us to you (and where the context so permits includes any performance of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

"**Government Authority**" means:

- a government or government department or other body;
 - a governmental, semi-governmental, or judicial person; or
 - a person (whether autonomous or not) who is charged with the administration of a law.
- "**Greenstock**," "**we**," "**us**," "**our**" means Greenstock Nurseries Pty Ltd ACN 010 688 356.

"**GST**" has the meaning given to it by the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**Intellectual Property Rights**" means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

"**Order**" means a written or oral order placed by you offering to acquire Goods from us.

"**Parties**" means Greenstock and the Customer, and "**Party**" means either one of them.

"**Price**" means the price payable for the Goods, as notified by us to you from time to time.

"**Services**" means all services performed by us (and where the context so permits includes any supply of Goods).

"**Tax Invoice**" and "**Taxable Supply**" have the same meaning as in the GST Act.

"**Terms**" means these terms of trade.

Interpretation

74. If there is any conflict or inconsistency between any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be (in descending order of precedence):
- any additional terms or conditions contained in our quotation (where applicable);
 - our Credit Facility Terms (where applicable);
 - these Terms; and
 - any other documents issued by us.
75. Unless the contrary intention appears, a reference to:
- these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties;
 - a reference to a clause is a reference to a clause contained in these Terms;
 - the singular includes the plural and vice versa;
 - "right" includes a benefit, remedy, authority, discretion, or power;
 - "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten (e.g. computer software or programs, concepts, data, plans, reports, drawings, specifications, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets);
 - "person" includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
 - a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and
 - any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
76. Headings are for convenience only and will not affect the interpretation of these Terms.
77. Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
78. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
79. Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.
80. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.
81. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties will be in the English language.
82. Nothing in these Terms is to be read or construed to purport to exclude, restrict, or modify or have the effect of excluding, restricting, or modifying the application in relation to the supply of Goods or Services all or any of the provisions the *Competition and Consumer Act 2010* (Cth) or any other law which cannot be excluded, restricted, or modified.