

## Jacqueline Wall T/A Walls Nursery – Terms & Conditions of Trade

- 1. Definitions**
  - 1.1 "Walls" shall mean Jacqueline Wall T/A Walls Nursery its successors and assigns or any person acting on behalf of and with the authority of Jacqueline Wall T/A Walls Nursery.
  - 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Walls' to the Customer.
  - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
  - 1.4 "Goods" shall mean Goods supplied by Walls' to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Walls' to the Customer.
  - 1.5 "Services" shall mean all Services supplied by Walls' to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
  - 1.6 "Price" shall mean the price payable for the Goods as agreed between Walls' and the Customer in accordance with clause 4 of this contract.
  - 1.7 "Finished Product" shall mean any plant product sold in the form it is used by the ultimate consumer, including without limitation the flower, stem and leaves. Finished Product does not include "Plant Materials".
  - 1.8 "Plant Material" shall mean any portion of a plant, or parts thereof, including without limitation, a blossom, spray, potted plant or cutting, which is or may be usable, during a particular part of a plant's growth cycle to asexually reproduce a plant.
- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 3. Acceptance**
  - 3.1 Any instructions received by Walls' from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Walls' shall constitute acceptance of the terms and conditions contained herein.
  - 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
  - 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Walls'.
  - 3.4 The Customer shall give Walls' not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Walls' as a result of the Customer's failure to comply with this clause.
  - 3.5 Goods are supplied by Walls' only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 4. Price And Payment**
  - 4.1 At Walls' sole discretion the Price shall be either:
    - (a) as indicated on invoices provided by Walls' to the Customer in respect of Goods supplied; or
    - (b) Walls' current price at the date of delivery of the Goods according to Walls' current Price list; or
    - (c) Walls' quoted Price (subject to clause 4.2) which shall be binding upon Walls' provided that the Customer shall accept Walls' quotation in writing within seven (7) days.
  - 4.2 Walls' reserves the right to change the Price in the event of a variation to Walls' quotation.
  - 4.3 At Walls' sole discretion a deposit may be required.
  - 4.4 At Walls' sole discretion:
    - (a) payment shall be due on delivery of the Goods; or
    - (b) payment shall be due before delivery of the Goods; or
    - (c) payment for approved Customers shall be due fourteen (14) days following the date of invoice or thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
  - 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
  - 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to one and one half (1.5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Walls'.
  - 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. Special Clauses**
  - 5.1 The Buyer shall not sell and/or export any Plant Material or Finished Product outside of Australia.
  - 5.2 The Buyer shall not for any reason whatsoever:
    - (a) asexually reproduce the Finished Product.
    - (b) use Plant Material of the Finished Product in any manner whatsoever.
    - (c) sell cuttings of the Finished Product.
    - (d) allow any other person to use the Finished Product in any manner whatsoever, and in particular, but not limited to, propagate the Finished Product.
- 6. Delivery Of Goods**
  - 6.1 At Walls' sole discretion delivery of the Goods shall take place when:
    - (a) the Customer takes possession of the Goods at Walls' address; or
    - (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Walls' or Walls' nominated carrier).
  - 6.2 When it has been arranged between the Customer and Walls' that the Customer shall pick up the Goods from Walls' address, the Customer must pick up the Goods on the day agreed day of delivery to ensure optimum plant quality.
  - 6.3 At Walls' sole discretion the costs of delivery are:
    - (a) included in the Price; or
    - (b) in addition to the Price; or
    - (c) for the Customer's account.
  - 6.4 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Walls' shall be entitled to charge a reasonable fee for redelivery.
  - 6.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
  - 6.6 Walls' may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
  - 6.7 The failure of Walls' to deliver shall not entitle either party to treat this contract as repudiated.
  - 6.8 Walls' shall not be liable for any loss or damage whatsoever due to failure by Walls' to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Walls'.
- 7. Risk**
  - 7.1 If Walls' retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
  - 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Walls' is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Walls' is sufficient evidence of Walls' rights to receive the insurance proceeds without the need for any person dealing with Walls' to make further enquiries.
- 8. Title**
  - 8.1 Walls' and the Customer agree that ownership of the Goods shall not pass until:
    - (a) the Customer has paid Walls' all amounts owing for the particular Goods; and
    - (b) the Customer has met all other obligations due by the Customer to Walls' in respect of all contracts between Walls' and the Customer.
  - 8.2 Receipt by Walls' of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Walls' ownership or rights in respect of the Goods shall continue.
  - 8.3 It is further agreed that:
    - (a) where practicable the Goods shall be kept separate and identifiable until Walls' shall have received payment and all other obligations of the Customer are met; and
    - (b) until such time as ownership of the Goods shall pass from Walls' to the Customer Walls' may give notice in writing to the Customer to return the Goods or any of them to Walls'. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
    - (c) Walls' shall have the right of stopping the Goods in transit whether or not delivery has been made; and
    - (d) if the Customer fails to return the Goods to Walls' then Walls' or Walls' agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
    - (e) the Customer is only a bailee of the Goods and until such time as Walls' has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Walls' for the Goods, on trust for Walls'; and
    - (f) the Customer shall not deal with the money of Walls' in any way which may be adverse to Walls'; and
    - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Walls'; and
    - (h) Walls' can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
    - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Walls' will be the owner of the end products.
- 9. Defects**
  - 9.1 The Customer shall inspect the Goods on delivery and shall within two (2) days of delivery (time being of the essence) notify Walls' of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Walls' an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Walls' has agreed in writing that the Customer is entitled to reject, Walls' liability is limited to either (at Walls' discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (C/with) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 10. Warranty**

To the extent permitted by statute, no warranty is given by Walls' as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Walls' shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 11. Intellectual Property**
  - 11.1 Where Walls' has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Walls', and shall only be used by the Customer at Walls' discretion.
  - 11.2 The Customer warrants that all designs or instructions to Walls' will not cause Walls' to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Walls' against any action taken by a third party against Walls' in respect of any such infringement.
- 12. Default & Consequences of Default**
  - 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Walls' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
  - 12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Walls'.
  - 12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Walls' from and against all costs and disbursements incurred by Walls' in pursuing the debt including legal costs on a solicitor and own client basis and Walls' collection agency costs.
  - 12.4 Without prejudice to any other remedies Walls' may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Walls' may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Walls' will not be liable to the Customer for any loss or damage the Customer suffers because Walls' has exercised its rights under this clause.
  - 12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
  - 12.6 Without prejudice to Walls' other remedies at law Walls' shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Walls' shall, whether or not due for payment, become immediately payable in the event that:
    - (a) any money payable to Walls' becomes overdue, or in Walls' opinion the Customer will be unable to meet its payments as they fall due; or
    - (b) the Customer 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
    - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Security And Charge**
  - 13.1 Despite anything to the contrary contained herein or any other rights which Walls' may have howsoever:
    - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Walls' or Walls' nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Walls' (or Walls' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
    - (b) should Walls' elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Walls' from and against all Walls' costs and disbursements including legal costs on a solicitor and own client basis.
    - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Walls' or Walls' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Cancellation**
  - 14.1 Walls' 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 Customer. On giving such notice Walls' shall repay to the Customer any sums paid in respect of the Price. Walls' shall not be liable for any loss or damage whatsoever arising from such cancellation.
  - 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by Walls' (including, but not limited to, any loss of profits) up to the time of cancellation.
  - 14.3 Cancellation of orders for Goods ordered to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
- 15. Privacy Act 1988**
  - 15.1 The Customer and/or the Guarantor/s agree for Walls' to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by Walls'.
  - 15.2 The Customer and/or the Guarantor/s agree that Walls' may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
    - (a) to assess an application by Customer; and/or
    - (b) to notify other credit providers of a default by the Customer; and/or
    - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
    - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
  - 15.3 The Customer consents to Walls' being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
  - 15.4 The Customer agrees that personal credit information provided may be used and retained by Walls' for the following purposes and for other purposes as shall be agreed between the Customer and Walls' or required by law from time to time:
    - (a) provision of Goods; and/or
    - (b) marketing of Goods by Walls', its agents or distributors in relation to the Goods; and/or
    - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
    - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
    - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
  - 15.5 Walls' may give information about the Customer to a credit reporting agency for the following purposes:
    - (a) to obtain a consumer credit report about the Customer; and/or
    - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 16. General**
  - 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
  - 16.3 Walls' shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Walls' of these terms and conditions.
  - 16.4 In the event of any breach of this contract by Walls' the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
  - 16.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Walls' nor to withhold payment of any invoice because part of that invoice is in dispute.
  - 16.6 Walls' may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
  - 16.7 The Customer agrees that Walls' may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Walls' notifies the Customer of such change.
  - 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
  - 16.9 The failure by Walls' to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Walls' right to subsequently enforce that provision.