

# TERMS AND CONDITIONS OF TRADING

The following Terms & Conditions of Trading of all goods and services supplied by Wariapendi Farm Nursery Pty Ltd (ABN 80003521588) ("the Supplier") to any person or entity placing an order with Wariapendi for the purchase of any goods/service ("the Customer") these terms and conditions shall apply except as to otherwise agreed upon in writing between Wariapendi and the customer.



## General

- 1 (a) These Conditions apply if the Supplier accepts any order for Goods/Services from the Customer, whether for cash or on credit. The Customer has no entitlement to credit unless, in the Supplier's sole discretion, the Supplier extends credit to the Customer.  
If, in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods to the Customer and to refuse to supply any Goods to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.
- (b) No quotation by Wariapendi Nursery shall constitute an offer. All quotes remain open for acceptance by the Customer and Wariapendi Nursery within thirty (30) days.
2. All orders/acceptance of quotations placed with Wariapendi Nursery shall only be accepted subject to these Terms and Conditions. Wariapendi Nursery may at any time, and from time to time alter these Terms and Conditions of Trading and such altered Terms and Conditions of Trading shall apply after notification by Wariapendi Nursery to the Customer.
3. Cancellation of orders/contracts will result in the loss of deposits. Wariapendi Nursery reserves the right to cancel any plant order / contract after four weeks from the time the plants are made available.  
Overdue collection of contract and holding orders will incur a cost of 10% of the invoice value per month, calculated on a daily basis from 21 days after the plants being made available.
4. All plant prices quoted are for pickup from nursery unless otherwise arranged.
5. The customer shall examine the goods immediately after delivery or installation and Wariapendi Nursery shall not be liable for any shortage, damage, defect unless Wariapendi Nursery receives notification in writing within 48 hours from date of delivery or installation unless otherwise stated in contract.
6. The risk in the goods shall pass to the customer upon delivery to the customer or his agent or to a transport company nominated by the customer.
7. The customer shall be responsible for any loss or damage to goods following delivery.
8. Wariapendi Nursery shall not be liable for any failure or delay in supply or delivery the goods / service where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of Wariapendi Nursery including, but not limited to, fire, frost, hail, plant disease, act of god, breakdown of plant, shortage of supply, vandalism, storm or tempest or transport delays.
9. Wariapendi Nursery shall not be liable to accept any goods returned but may in its discretion accept return of goods other than for reasons outlined in clause 5. Return freight and other expenses will be paid for by the customer.
10. Limitation of liability: To the maximum extent permitted by law, and subject to clauses 6, the Supplier's total liability arising out of or in connection with the performance of its obligations pursuant to these Conditions, the Supplier Terms & Conditions, or arising out of or in connection with the supply of specific Goods (including pursuant to or for breach of these Conditions, the Supplier Terms & Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:
  - (a) the Supplier shall have no liability to the Customer for any Consequential Loss;
  - (b) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods that gave rise to the Loss in question. The limitations and exclusions in this sub-clause do not apply to the extent that any Loss is directly attributable to:
    - (i) the personal injury or death caused by the Supplier's default, breach of these Conditions or the Supplier Terms & Conditions or negligence; or
    - (ii) fraud by the Supplier.

Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

## Account Customers

11. (a) All non-account (C.O.D.) customers must make payment before plants are released. The granting of credit is at the absolute discretion of Wariapendi Nursery. We accept payment by cash, cheque, bank transfer, EFTPOS, Mastercard or Visa card. Account Customers require a minimum of \$100.00 per transaction otherwise a \$10.00 accounting fee or C.O.D. shall apply. Account customers shall make payment of all amounts payable within terms as outlined on invoice.  
(b) The Customer acknowledges that, to the extent possible, the Electronic Transactions Act 2000 applies to these Conditions and accepts that invoices, statements, notices, correspondence or any other documents may be sent by the Supplier to the Customer via email, facsimile or other electronic means and will be deemed to have been received by the Customer immediately after being sent by the Supplier.  
(c) If the Customer fails to comply with any of the terms of these Conditions or suffers an Insolvency Event, the balance of the Customer's account to the Supplier will become due and payable immediately.
12. All overdue accounts are subject to an administration charge of 2.5% of amount due or a minimum of \$20.00 per month. Account status may be cancelled at any time at Wariapendi Nursery discretion.
13. Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off. The Customer agrees to pay Wariapendi Nursery Administration and Handling fees in respect of any copies of documents required or other processing involved in the conduct of the account.
14. If the Customer fails to make payment in accordance with Clause 11(a), Wariapendi Nursery shall be entitled to:-
  - (i) Charge an interest rate of 10% per annum on overdue amounts calculated on a day to day basis on any monies due but unpaid. Please note that this interest charge is not a penalty but is a true measure of damages incurred by Wariapendi Nursery.
  - (ii) Claim from the customer all costs, expenses and charges incurred on any account in dispute.

## Wholesale and Trade Customers

15. To be eligible for wholesale or trade prices, customers must be registered and approved by Wariapendi Nursery as a Trade Customer.
16. It is at Wariapendi's discretion as to eligibility for registration and approval.
17. Registration status for Trade Customers will be reviewed regularly. There is an expectation that customer trading activity with Wariapendi Nursery reflects genuine trade activity.