

KC VINES and ROOT STOCKS
ABN 83 687 534 770

CONDITIONS OF CONTRACT

1. **INTERPRETATION:**

"Nursery" means KC Mildura Pty Ltd ATF KC Trust T/as KC Vines & Rootstocks and its successors and assigns, P.O. BOX 1054 Mildura VIC. 3502

"The Customer" means

"Conditions" or "these Conditions" mean these conditions of Contract.

"Goods" means all goods, merchandise and services supplied by the nursery, pursuant to these Conditions, to the Customer or as the Customer may direct.

2. **ALTERATION OF CONDITIONS.**

These conditions shall apply to all orders for goods and/or works placed by the Customer with the Nursery to the exclusion of all other terms or conditions unless otherwise expressly agreed in writing. If the terms of the Customer's order are inconsistent with these conditions, the delivery of the goods to the Customer or as the Customer directs shall constitute an offer by the nursery to sell the goods to the Customer pursuant to these conditions which offer the Customer shall be deemed to have accepted by taking possession or repossession of the goods.

3. **NURSERY MAY DECLINE ORDERS.**

The nursery reserves the right to accept in whole or part any order or decline any order, and any order or part order not accepted is deemed cancelled.

4. **GOVERNING LAW AND SUBMISSION TO JURISDICTION.**

These conditions and any Contract incorporating the same shall be governed by and construed in accordance with the laws of the State of Victoria and the parties hereto accept the exclusive jurisdiction of Courts exercising jurisdiction in that State.

5. **CANCELLATION OF ORDERS.**

Once lodged with the nursery an order may not be cancelled, or delivery in respect thereof delayed, without the nursery's prior agreement in writing, and the Customer shall be liable for all costs and expenses incurred by the nursery for materials or labour or in any other way arising out of an order, prior to any acceptance of any purported cancellation of an order by the Customer.

6. **TERMS OF PAYMENT.**

Payment for all works and/or the supply of the goods shall be made by the Customer to the nursery prior to the dispatch of the goods OR with prior arrangement of the nursery, within 14 days of the date of any invoice or account rendered by the nursery to the Customer. The nursery has the right to deliver interim invoices or accounts for part payment or progress payments in relation to the subject matter of any Contract. Invoiced amounts which have not been paid within the prescribed period shall incur an interest charge from the date of the invoice or invoices to which any balance outstanding relates, until payment thereof, at the rate of interest being 2% additional to the rate prescribed from time to time under Section 2 of the Penalty Interest Rates Act 1983, or at such other rate as may be charged by the nursery from time to time as notified in writing beforehand by the nursery to the Customer, such interest to accrue and be payable notwithstanding any agreements between the Customer and the nursery for extension of time for payment. Where payments are overdue, the nursery may at its option either cancel uncompleted Contracts or orders forthwith, or exercise any other rights open to it, under clause 10 hereof, or otherwise.

In the event of the nursery being under any time obligation for completion of any works for supply or delivery of any goods, any period of suspension by the nursery under this Condition pending payment by the Customer of any monies owing to the nursery shall not be included in the computation of time for completion by the nursery of its obligations.

7. **DELAYS.**

The date for completion of works or the supply and delivery of goods (if any) indicated by the nursery is the estimated date only, and the nursery shall be under no liability for any loss or damage howsoever arising if the goods are not delivered or installed by any estimated date indicated. Where the nursery is unable to undertake the works or supply and deliver the goods because of matters beyond its control, then the estimated date for completion shall be extended until the cessation of the effect of such matter or matters.

8. **POINT OF DELIVERY AND PASSING OF RISK.**

Unless otherwise agreed in writing or stated in the nursery's current price list, the Customer shall take delivery of the goods at the Nursery's address, and risk in respect of the goods shall pass on such delivery. The nursery accepts no responsibility for damage to goods in transit, such responsibility shall the Customer's. At the customer's request, the nursery shall organise such transport and insurance as the customer directs, the nursery acting as the customer's agent. In any event, the nursery shall not be liable for any damage to goods in transit not notified in writing to it and to the carrier concerned within 7 days after delivery of the goods to the Customer.

9. **NON-DELIVERY**

The nursery shall not be liable for any non-delivery of goods unless written notification of such non-delivery is received within 7 days after receipt of the nursery's statement or invoice which includes a reference to the non-delivered goods. The nursery's liability for non-delivery shall be limited to replacement of the goods within a reasonable time.

10. **TITLE**

Notwithstanding paragraph 8, until payment in full to the nursery is made for the goods sold and/or for their installation:

(i) Property in the goods remains with the nursery, and the Customer agrees to hold the goods as bailee for the nursery;

(ii) The nursery may at any time terminate any Contract relating to the goods, and the bailment, without notice to the Customer, and may thereupon take possession of the goods.

(iii) The Customer authorises the nursery by its servants or agents to enter any premises owned, leased or otherwise occupied by the Customer for the purpose of taking possession of the goods, and authorises the nursery by its servants or agents to use all reasonable force to obtain such possession.

11. **RETURN OF GOODS**

(i) **Return Not Generally Accepted:**

Except in accordance with clause 8 hereof, no goods shall be returned without the prior consent of the nursery and where goods are returned without such consent, the same shall be returned to the Customer at the Customer's expense. Goods returned with the consent of the nursery shall incur a re-stocking charge of 15%.

(ii) **Manner of Return:**

Unless otherwise agreed by the nursery, all returns should be made via the authorised transport making the initial delivery, or as the nursery shall otherwise direct, and all returned goods must be accompanied by an itemised credit claim signed by or on behalf of the Customer stating the reason for the return of the goods. Intention to return goods must be notified to the nursery within 7 days of the date of delivery to the Customer, and return of the goods must be made to the point of despatch to the Customer within 14 days from the date of receipt of the goods by the Customer. Sub-clause (i) hereof shall apply in the event of the failure of the Customer to comply strictly with the terms of this sub-clause.

12. **GUARANTEES AND LIMITATION OF LIABILITY.**

Except where a specific Guarantee in writing has been given by the nursery, goods sold by the nursery carry only such guarantees and warranties as are specified in any catalogue of the nursery, or in any catalogues of suppliers of the goods to the nursery, and in no case shall the liability of the nursery under such guarantees and warranties or otherwise in respect of any damage to or occasioned by the goods sold exceed the invoice value of the goods. All conditions and warranties as to the condition or quality or merchantability of the goods, or their fitness for any particular purpose, or as to their having particular attributes, and all other conditions and warranties whatsoever, whether statutory or otherwise, are excluded, provided however that these conditions of Contract shall not be taken as applying to exclude, restrict or modify in any manner whatsoever the rights conferred on consumers and others by those Commonwealth, State and Territorial laws which cannot be lawfully excluded, restricted or modified.

In respect of any liability on the nursery to the Customer for any breach of any of the conditions or warranties which may be mandatorily implied into any contract between the nursery and the Customer by virtue of any of the provisions of Division 2 of Part V of the Trade Practices Act or by any other legislation whatsoever, such liability shall be limited to:-

a. In the case of goods, one or other of the following as the nursery may elect:

(i) The replacement of the goods or the supply of the equivalent thereof.

(ii) The payment of the cost of replacing the goods or of acquiring the equivalent thereof.

b. In the case of services, one or other of the following as the nursery may elect:

(i) The supplying of the services again; or

(ii) The payment of the cost of having the services supplied again.

13. **GST**

"GST" means any consumption tax imposed by government, by whatever name, which operates during the period of any contract to which these Conditions relate, and includes (without limitation) a goods and services tax, a broad-based consumption tax or indirect tax and value-added tax.

Each amount, of whatever description, specified as payable under any Contract to which these Conditions relate is expressed net of GST. In addition to the amount payable the customer must pay to the nursery on demand the GST payable by the nursery in respect of that amount.