



Kauri Park Nurseries  
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# CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: \_\_\_\_\_ REF No. \_\_\_\_\_

CUSTOMER'S TRADE NAME: \_\_\_\_\_

CUSTOMER'S FULL or LEGAL NAME: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Physical Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Postcode: \_\_\_\_\_ \_\_\_\_\_ Postcode: \_\_\_\_\_

**COMMERCIAL CUSTOMERS ONLY**

Company Number: \_\_\_\_\_

Requested Credit Limit: \_\_\_\_\_ Date Established: \_\_\_\_\_

Contact 1: \_\_\_\_\_ Contact 2: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

**DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEES (If a Trust)**

Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

\_\_\_\_\_

Postcode: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Postcode: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

**TRADE REFERENCES**

Business Name 1: \_\_\_\_\_ Business Name 2: \_\_\_\_\_

Address or A/C No: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ Fax: \_\_\_\_\_

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Kauri Park Nurseries which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

**SIGNED (AGENT):** \_\_\_\_\_ **SIGNED (CUSTOMER):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

**WITNESS TO CUSTOMER'S SIGNATURE:**

**Signed:** \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

# Kauri Park Nurseries Limited – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Agent" means Kauri Park Nurseries Limited, its successors and assigns or any person acting on behalf of and with the authority of Kauri Park Nurseries Limited.
- 1.2 "Customer" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Agent to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Agent and the Customer in accordance with clause 4 below.
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Agent's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Agent.
3. **Change in Control**
- 3.1 The Customer shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Agent as a result of the Customer's failure to comply with this clause.
4. **Price and Payment**
- 4.1 At the Agent's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Agent to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to the Agent's current price list; or
  - (c) the Agent's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Agent reserves the right to change the Price if a variation to the Agent's quotation is requested. Any variation (including, but not limited to, a variation as a result of fluctuations in foreign currency rates of exchange, or any additional works requested due to unforeseen circumstances or as a result of increases to the Agent in the cost of materials and labour) will be charged for on the basis of the Agent's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Agent's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Agent, which may be:
  - (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with the Agent's payment schedule;
  - (d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Agent.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Agent.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Agent an amount equal to any GST the Agent must pay for any supply by the Agent under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
5. **Delivery of Goods**
- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Agent's address; or
  - (b) the Agent (or the Agent's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At the Agent's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection 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 the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Any time or date given by the Agent to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Agent will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
6. **Access**
- 6.1 The Customer shall ensure that the Agent has clear and free access to the work site at all times to enable them to deliver the Goods. The Agent shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Agent.
7. **Underground Locations**
- 7.1 Prior to the Agent delivering any Goods, the Customer must advise the Agent of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Whilst the Agent will take all care to avoid damage to any underground services the Customer agrees to indemnify the Agent in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 7.1.
8. **Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Agent is entitled to sufficient all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 8.3 If the Customer requests the Agent to leave Goods outside the Agent's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 The Customer acknowledges and understands that the Goods have been delivered free of defect and undertakes to properly maintain the Goods and/or follow any instructions or guidelines provided by the Agent in regard to the proper care of the Goods (including but not limited to, adequate watering of the Goods).
- 8.5 The Agent shall not be liable to replace any trees, shrubs, plants, natural turf and any other flora, foliage or vegetation supplied by the Agent unless agreed to in writing and unless reported to the Agent within seven (7) days of the date of delivery.
9. **Title**
- 9.1 The Agent and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid the Agent all amounts owing to the Agent; and
  - (b) the Customer has met all of its other obligations to the Agent.
- 9.2 Receipt by the Agent 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.
- 9.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Goods and must return the Goods to the Agent on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Agent and must pay or deliver the proceeds to the Agent on demand.
  - (d) the Customer irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods.
  - (e) the Agent may recover possession of any Goods in transit whether or not delivery has occurred.
  - (f) the Customer shall not charge or grant an encumbrance over the Goods nor grant any other interest in the Goods while they remain the property of the Agent.
  - (g) the Agent may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
10. **Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
  - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods previously supplied by the Agent to the Customer (if any) and all Goods that will be supplied in the future by the Agent to the Customer.
- 10.2 The Customer undertakes to:
  - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register a financing charge statement or a change demand without the prior written consent of the Agent; and
  - (d) immediately advise the Agent of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.3 The Agent and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 10.5 Unless otherwise agreed to in writing by the Agent, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Customer shall unconditionally ratify any actions taken by the Agent under clauses 10.1 to 10.5.
11. **Security and Charge**
- 11.1 In consideration of the Agent agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 11.3 The Customer irrevocably appoints the Agent and each director of the Agent as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
12. **Customer's Disclaimer**
- 12.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Agent or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Agent and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
13. **Defects**
- 13.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Agent 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 the Agent has agreed in writing that the Customer is entitled to reject, the Agent's liability is limited to (at the Agent's discretion) replacing the Goods.
14. **Returns**
- 14.1 Returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 13.1; and
  - (b) the Agent has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (d) the Goods have been maintained in accordance with any instructions provided by the Agent; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 14.2 The Agent will not accept the return of Goods for credit.
- 14.3 Returned Goods may (at the Agent's sole discretion), incur restocking and handling fees.
- 14.4 Non-stocklist items are under no circumstances acceptable for credit or return.
15. **Warranty**
- 15.1 Subject to the conditions of warranty set out in clause 15.2 the Agent warrants that if any defect in any workmanship of the Agent becomes apparent and is reported to the Agent within seven (7) days of the date of delivery (time being of the essence) then the Agent will either (at the Agent's sole discretion) replace or remedy the workmanship.
- 15.2 The conditions applicable to the warranty given by clause 15.1 are:
  - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Agent; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall not cover any defect or damage which is caused or partly caused by or arise through the warranty if the workmanship is repaired, altered or overhauled without the Agent's consent.
  - (c) in respect of all claims the Agent shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 15.3 For Goods not manufactured by the Agent, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
16. **Consumer Guarantees Act 1993**
- 16.1 If the Customer buys Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Agent to the Customer.
17. **Intellectual Property**
- 17.1 Where the Agent has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Agent.
- 17.2 The Customer warrants that all designs, specifications or instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
- 17.3 The Customer agrees that the Agent may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Agent has created for the Customer.
18. **Default and Consequences of Default**
- 18.1 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 a half percent (2.5%) per calendar month (and at the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes the Agent any money the Customer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's collection agency costs, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies the Agent may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Agent may suspend or terminate the supply of Goods to the Customer. The Agent will not be liable to the Customer for any loss or damage the Customer suffers because the Agent has exercised its rights under this clause.
- 18.4 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Customer will be unable to make a payment as a result of a default;
  - (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.
19. **Cancellation**
- 19.1 The Agent 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 the Agent shall repay to the Customer any money paid by the Customer for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
20. **Privacy Act 1993**
- 20.1 The Customer authorises the Agent or the Agent's agent to:
  - (a) access, collect, retain and use any information about the Customer:
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Agent from the Customer directly or obtained by the Agent from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 20.2 Where the Customer is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Customer shall have the right to request the Agent for a copy of the information about the Customer retained by the Agent and the right to request the Agent to correct any incorrect information about the Customer held by the Agent.
21. **Construction Contract Act 2002**
- 21.1 The Customer hereby expressly acknowledges that:
  - (a) the Agent has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Agent by a particular date; and
    - (iv) the Agent has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if the Agent suspends work, it:
    - (i) is not in breach of contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Customer or by any person claiming through the Customer; and
    - (iii) is entitled to an extension of time to complete the contract; and
    - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if the Agent exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Agent under the Contractual Remedies Act 1979; or
    - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Agent suspending work under this provision.
22. **Unpaid Seller's Rights**
- 22.1 Where the Customer has left any item with the Agent for repair, modification, exchange or for the Agent to perform any other service in relation to the item and the Agent has not received or been tendered the whole of any moneys owing to it by the Customer, the Agent shall have, until all moneys owing to the Agent are paid:
  - (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of the Agent shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Agent having been obtained against the Customer.
23. **General**
- 23.1 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision. 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.
- 23.2 The terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 23.3 The Agent 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 the Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 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 the Agent nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 The Agent may assign or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.6 The Customer agrees that the Agent may amend these terms and conditions at any time. If the Agent makes a change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Agent to provide Goods to the Customer.
- 23.7 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.
- 23.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations (Ver 2.01.120806.ms)