



## DOMESTIC TERMS & CONDITIONS OF TRADE

### 1. DEFINITIONS

- 1.1 "KPL" shall mean Kiwi Plants Ltd, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from KPL.
- 1.3 "Goods" shall mean:
- 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by KPL to the Client; and
- 1.3.2 all Goods supplied by KPL to the Client; and
- 1.3.3 all inventory of the Client that is supplied by KPL; and
- 1.3.4 all Goods supplied by KPL and further identified in any invoice issued by KPL to the Client, which invoices are deemed to be incorporated into and form part of this agreement; and
- 1.3.5 all Goods that are marked as having been supplied by KPL or that are stored by the Client in a manner that enables them to be identified as having been supplied by KPL; and
- 1.3.6 all of the Client's present and after-acquired Goods that KPL has performed work on or to or in which goods or materials supplied or financed by KPL have been attached or incorporated.
- 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods and Services" shall mean all goods, products, services and advice provided by KPL to the Client.
- 1.5 "Price" shall mean the cost of the Goods and Services as agreed between KPL and the Client and includes all disbursements eg charges KPL pay to others on the Client's behalf subject to clause 4 of this contract.

### 2. ACCEPTANCE

- 2.1 Any instructions received by KPL from the Client for the supply of Goods and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises KPL to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Goods and Services provided by KPL to any other party.
- 3.2 The Client authorises KPL to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

### 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods and Services shall be deemed to be sold at the current amount as such Goods and Services are sold by KPL at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of KPL between the date of the contract and delivery of the Goods and Services.

### 5. PAYMENT

- 5.1 Payment for Goods and Services shall be made in full on completion of work or installation ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by KPL in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

### 6. QUOTATION

- 6.1 Where a quotation is given by KPL for Goods and Services:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for sixty (60) days from the date of issue; and
- 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
- 6.1.3 KPL reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and Services are required in addition to the quotation the Client agrees to pay for the additional cost of such Goods and Services.

### 7. RISK

- 7.1 The Goods and Services remain at KPL risk until delivery to the Client.
- 7.2 Delivery of Goods and Services shall be deemed complete when KPL gives possession of the Goods and Services directly to the Client or possession of the Goods and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Client.

### 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods and Services supplied by KPL passes to the Client only when the Client has made payment in full for all Goods and Services provided by KPL and of all other sums due to KPL by the Client on any account whatsoever. Until all sums due to KPL by the Client have been paid in full, KPL has a security interest in all Goods and Services.
- 8.2 If the Goods and Services are incorporated into any property of the Client, the Goods and Services shall remain with KPL until the Client has made payment for all Goods and Services, and where those Goods and Services are mixed with other property so as to be part of or a constituent of any new Goods and Services, title to these new Goods and Services shall be assigned to KPL as security for the full satisfaction by the Client of the full amount owing between KPL and Client.
- 8.3 The Client gives irrevocable authority to KPL to enter any premises occupied by the Client or on which Goods and Services are situated at any reasonable time after default by the Client or before default if KPL believes a default is likely and to remove and repossess any Goods and Services and any other property to which Goods and Services are incorporated. KPL shall not be liable for any costs, damages, expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. KPL may either resell any repossessed Goods and Services and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and Services and credit the Client's account with

the invoice value thereof less such sum as KPL reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 8.4 Where Goods and Services are retained by KPL pursuant to clause 8.3 the Client waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the Client:
- 8.5.1 Non payment of any sum by the due date.
- 8.5.2 The Client intimates that it will not pay any sum by the due date.
- 8.5.3 Any Goods and Services are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Goods and Services.
- 8.5.4 Any Goods and Services in the possession of the Client are materially damaged while any sum due from the Client to KPL remains unpaid.
- 8.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distrains against any of the Client's assets.
- 8.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
- 8.5.7 Any material adverse change in the financial position of the Client.

### 9. SECURITY INTEREST FOR SERVICE PROVIDERS

- 9.1 The Client gives KPL a security interest in all of the Client's present and after-acquired property that KPL has performed services on or to or in which goods or materials supplied or financed by KPL have been attached or incorporated.

### 10. PAYMENT ALLOCATION

- 10.1 KPL may in its discretion allocate any payment received from the Client towards any invoice that KPL determines and may do so at the time of receipt or at any time afterwards and on default by the Client may reallocate any payments previously received and allocated. In the absence of any payment allocation by KPL, payment shall be deemed to be allocated in such manner as preserves the maximum value of KPL's purchase money security interest in the Goods and Services.

### 11. GENERAL LIEN

- 11.1 The Client agrees that KPL may exercise a general lien against any Goods and Services or property belonging to the Client that is in the possession of KPL for all sums outstanding under this contract and any other contract to which the Client and KPL are parties.
- 11.2 If the lien is not satisfied within 7 days of the due date KPL may, having given notice of the lien at its option either:
- 11.2.1 Remove such Goods and Services and store them in such a place and in such a manner as KPL shall think fit and proper and at the risk and expense of the Client; or
- 11.2.2 Sell such Goods and Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

### 12. DISPUTES AND RETURN OF GOODS

- 12.1 No claim relating to the Goods and Services will be considered unless made in writing within seven (7) days of delivery/and or installation.
- 12.2 No Goods will be accepted for return without prior inspection and approval by KPL.

### 13. LIABILITY

- 13.1 To the extent allowed by Law, KPL is not liable (in contract or in tort, including negligence) to the Client for any losses or costs (including legal costs) that may be incurred during the performance of this contract or there after.
- 13.2 KPL's liability for any direct or any consequential losses shall at all times be limited to a maximum of the amount paid to KPL for the contracted work.
- 13.3 The client undertakes to indemnify KPL against any:
- a) Physical loss or damage,
- b) Direct and/or indirect damage suffered,
- c) Loss or cost incurred (including legal costs) by KPL
- d) Any claim or proceedings against KPL
- That result from any act or omission on the part of the client.

### 14. WARRANTY

- 14.1 No representation, condition, warranty or premise expressed or implied by law or otherwise applies to the Client except where goods are supplied or services provided pursuant to the Consumer Guarantees Act 1993 or except where expressly stated in this contract.

### 15. COPYRIGHT AND INTELLECTUAL PROPERTY

- 15.1 KPL, owns and has copyright in all designs, goods, products, specifications produced by KPL in connection with the Goods and Services provided pursuant to this contract and the client may use the Goods and Services only if paid for in full and for the purpose for which they were intended and supplied by KPL.

### 16. CONSUMER GUARANTEES ACT

- 16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Goods and Services from KPL for the purposes of a business in terms of section 2 and 43 of that Act.

### 17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 17.1 If the Client is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for KPL agreeing to supply Goods and Services and grant credit to the Client at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to KPL the payment of any and all monies now or hereafter owed by the Client to KPL and indemnify KPL against non-payment by the Client. Any personal liability of a signatory hereto shall not exclude the Client in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Client shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

### 18. MISCELLANEOUS

- 18.1 KPL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.2 Failure by KPL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations KPL has under this contract.
- 18.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

Signed..... Date.....

