



MOSSMONT NURSERIES Pty Ltd

A.C.N. 004 435 947

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OFFICE/NURSERY
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TERMS AND CONDITIONS

References to “we” “our” and “us” are references to Mossmont Nurseries Pty Ltd. References to ‘You’ are in accordance with the Customer details in the Schedule.

By placing an order with us You, our Customer, are agreeing to the terms and conditions below and in the attached Schedule. If You do not agree with these terms and conditions, do not place an order.

- 1. CONTRACT:** When You place an order with us You are making an offer to us. The offer may be accepted by us by sending You a written confirmation of acceptance of Your order or by sending You the ordered stock or products (whichever is the earlier).
- 2. RIGHT TO REFUSE ORDERS:** We reserve the right not to accept or process any order for whatever reason.
- 3. AVAILABILITY:** We do not warrant or represent that any particular part, part of product or stock or service will be available or become available at any time. Products advertised may differ in appearance from those advertised. Any description of the goods under this agreement shall not create an express warranty that any goods shall conform to the description. Provision of a sample does not constitute a warranty that all goods shall conform to the sample or model. You shall make Your own determination of the suitability of the material for the use contemplated by You. You shall not rely upon any our or our agents’ representations, skill or judgment.
- 4. PRICING:** We reserve the right to change pricing and product specifications with prior notification. In addition, if the costs of our provision of stock or products to You changes due to causes outside of our control, such as, without limitation, an increase in the price of raw materials or labour, then we will endeavour to notify You of those changes within a reasonable time and You agree to pay this additional amount. In the absence of written agreement by us, all orders will be invoiced at prices in effect at the time of collection or delivery of the products. GST will be in addition to the specified purchase price (unless and to the extent otherwise indicated) which shall be payable to us. Interest will accrue in respect of any money payable to us at a rate of at two per cent per month, calculated on a monthly outstanding basis. Any deposit shall be non-refundable.
- 5. TERMS:** Unless otherwise agreed by us, the price for purchases must be paid on delivery. Acceptable method of payment is by cash cheque or electronic funds transfer. Time shall be of the essence in respect of Your obligation to make payment for and take delivery of the products, but not otherwise.
- 6. DELIVERY:** Where delivery is made by us, risk in the product passes to You upon delivery. Where You arrange delivery or pick-up then risk will pass to You on collection of the goods from us.
- 7. TITLE:** Until payment of the entire sum payable by You, You shall have no ownership of or property or title in the products and shall hold the products as bailee for us. You must keep the goods or products subject to this clause 7 separate from other goods received by You and mark the products as being the

property of us until title passes. Any monies received from the sale of products subject to this clause 7 must be held separate from Your other monies and must be held for our benefit and paid to us until the debt is paid in full. You acknowledge and agree that if You fail to make complete and timely payment for the products, we or our representatives can enter the premises where the products are located without prior notice and at our absolute discretion:

1. take possession of those products; and
2. harvest or remove destroy or poison any plants whether or not affixed to land, without liabilities for conversion, trespass or otherwise.

You further agree that we will have a general lien over all of Your goods or materials or other property that belong or are owned by You but that are in our possession and that we shall be entitled, upon the expiration of 14 days' notice to You, to dispose of such goods or materials or property and apply the proceeds in satisfaction of the unpaid debts.

You further agree, at Mossmont's request, to do all acts, matters and things including sign all documents (provided they are on terms similar to or having the same effect and are on terms no more onerous on You than these Terms) to ensure Mossmont holds a valid and perfected security interest under the Personal Property Securities Act 2009 (Cth). Any failure by You to promptly comply with any such request constitutes a default by the Customer pursuant to clause 8.

- 8. EFFECT OF BREACH OF CONTRACT:** If You refuse or fail to take delivery of products or to make full payment of all monies owing us then we may at our absolute discretion (without prejudice to any other rights at law or in equity):
 1. treat this order and any contract constituted by the order as repudiated by You. In that case any order and any contract shall be terminated and all of Your rights under the order or the contract shall be extinguished and any cash deposit paid to us shall be retained by us as a genuine pre-estimation of our losses; or
 2. notwithstanding that property in the products has not passed to You, sue for and recover the total gross price payable for the products (less any cash deposit already paid) together with any loss of profits and all expenses and costs incurred as a consequence of Your refusal or failure to comply with the order or the contract, and retain the property in and possession of products until such time as all monies payable by You have been recovered by us.
- 9. RELEVANT LAW:** These terms and conditions are subject to the laws of the State of New South Wales and to the exclusive jurisdiction of the Courts of that State. Notwithstanding Your location, the parties acknowledge and agree that this contract arises in Griffith, New South Wales.
- 10. PERSONAL PROPERTY SECURITIES ACT (2009):** Where the Personal Property Securities Act 2009 "PPSA" is in force:
 1. You acknowledge that these Terms create a security interest under the PPSA in all goods supplied by Mossmont to You, and for avoidance of doubt, the proceeds of sale of those goods.
 2. You consent to Mossmont effecting a registration on the PPSA register (in any manner we consider appropriate) in relation to any security interest contemplated by these Terms (including but not limited to an interest under clause 7) and You further agree:
 - a. to do all things necessary and required by Mossmont to make sure that the security interest is a perfected "purchase money security interest" under the PPSA; and
 - b. not to allow any third party to acquire a security interest in the goods.
 3. To the extent that the goods are for the Customer's business use, the Customer agrees to the extent permitted under the PPSA, that the Customer has no right:
 - a. to receive notice of removal of an accession under the PPSA
 - b. under Chapter 4 if the PPSA; or
 - c. under the PPSA to receive a copy of any verification statement of a financing statement under the PPSA.
 4. You agree that to the extent permitted under the PPSA, You hereby waive Your rights under sections 95, 96, 117, 118, 120, 121 (4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142 and 143 of the PPSA.
 5. Unless otherwise agreed to in writing by Mossmont, You waive Your right to receive a verification statement in accordance with section 157 of the PPSA.

6. You hereby waive Your rights to receive notices under sections 95, 118, 121 (4), 130, 132 (3) (d) and 132 (4) of the PPSA

7. You must not assign or grant a security interest in respect of any accounts owed to You in relation to the goods supplied to You by Mossmont without Mossmont's prior written consent.

8. Without limiting any other provision of these Terms, if the Customer makes a payment to Mossmont at any time whether in connection with the supply of goods or otherwise, Mossmont may at its absolute discretion apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

11. LIMITATION OF LIABILITY: Clauses 3, 11, 12 and 13 are subject to provisions of legislation such as the *Competition and Consumer Act 2010* (as amended from time to time) to the extent that these provisions cannot be excluded by contract for "consumers" as defined in the Act. To the extent that the Act requires, clauses 3, 11, 12 and 13 do not apply to "consumers" as defined in the Act.

12. To the extent permitted by legislation such as the *Competition and Consumer Act 2010* (as amended from time to time) and subject to clause 10, the sole warranties are those set out in these terms and conditions. If any nursery stock sold proves to be of a different variety than ordered or is in any other way defective, our liability will be limited in accordance with clause 12. Subject to clause 10, this shall be the sole and exclusive remedy available to You. References to any delivery date are references to the delivery date sought by You do not constitute a warranty that the stock will be supplied by that date or in the quantities requested by You. In no circumstances shall we have any liability arising from or as a result of delay in provision of the stock. You release, indemnify and hold us harmless from any liability and any claim by any person in respect of the stock. Without limiting the generality of the foregoing, in no circumstances shall the liability of Us exceed the cost of the relevant stock.

13. In no event shall our liability exceed, at our election, the cost of:

- a. the product or services provided by us;
- b. the repair of the product;
- c. replacement of the product; or
- d. refund of the purchase price of the product.

14. Subject to clause 10 above, we shall not be liable for prospective profits or special, indirect or consequential damages.

15. NON PROPAGATION: The stock is supplied on the sole and express basis that it will not be propagated and that You shall not sell or part with possession of the stock to any person or entity who has not agreed to this condition. This will also be the subject of an express non-propagation agreement. You acknowledge that damage may not be a sufficient remedy for breach of this provision and that injunctive relief would be appropriate in the event that we have reason to believe that You or someone else may breach this provision.

16. FORCE MAJEURE: We shall have no liability in respect of failure to deliver or perform, or delay in delivering or performing, any obligations due to any cause outside our reasonable control. If the product requires an authorisation or a permit for its use from any authority then it is solely Your obligation to enquire as to the need for and to obtain the permit or authority prior to the use of the goods or services. This contract shall be voidable at our election if delivery is prevented by fire, flood, drought, frost, strike or other causes beyond our reasonable control.

17. CONSUMER GUARANTEES CANNOT BE EXCLUDED Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. A consumer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. A consumer is also entitled to have the goods repaired or replaced if the goods or services fail to be of acceptable quality and the failure does not amount to a major failure.

18. OTHER CONDITIONS OF PURCHASE As noted in the Schedule to these terms and conditions.

19. DEPOSIT AND PAYMENT REQUIREMENTS As noted in the Schedule to these terms and conditions.

20. PERSONAL GUARANTEES In consideration of the agreement of Mossmont to supply the stock to You at the request of the Directors listed in Schedule 1 and who have signed below, the Directors, jointly and severally:

1. guarantee the due and punctual observance and performance of all of Your obligations pursuant to this agreement (“the Agreement”), including, without limitation, all payments due in accordance with and on the days and in the manner anticipated in the Agreement. The Directors agree to pay on demand and make good all loss damage claims costs charges and expenses sustained or incurred by You by reason of or in consequence of any default by You;
2. if at any time default shall be made in the punctual payment of any money owing by You to Us under this Agreement and that default continues for seven days then the Directors will on demand pay to us the whole of those money due or payable to us without set-off or reduction for any cause;
3. in the event of any default by You pursuant to this Agreement, the Directors as a separate covenant agree to indemnify and keep indemnified Us from and against all loss of moneys and all losses damages claims costs (including legal costs on a solicitor/client basis) and all charges and expenses whatsoever that we may incur by reason of any that default on the part of You;
4. the Directors agree that no postponement or forbearance on our part to enforce the terms and conditions by and on the part of You to be performed under this Agreement or any other remedies available to us shall affect this guarantee. The Directors shall not be released by reason of our postponement or forbearance or by any variation in the provisions of this Agreement or by any other thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Guarantors. This guarantee is a continuing one and shall not be determined or discharged by reason of the liquidation (voluntary or otherwise) administration or of the reconstruction or of the amalgamation of any company. The Directors acknowledge that this guarantee and indemnity shall apply even if You are not required to pay money under the terms of this Agreement. In order to give effect to this guarantee and indemnity the Directors declare that we shall be at liberty to act as though the Directors were the principal debtors and You waive all or any of Your rights and sureties which may at any time be inconsistent with the provision of this guarantee and indemnity;
5. the Guarantors’ liability is not discharged by a payment to us which is later avoided by law. If that happens we and the Directors will be restored to our and their respective rights and obligations as if the payment had not been made;
6. the Directors are not to prove in any insolvency of You unless authorised in writing to do so by us;
7. if this guarantee is not signed or is unenforceable against any of the Guarantors, it remains fully enforceable against the other Guarantors; and
8. in this clause 20, unless the contrary intention appears, singular includes the plural and vice versa.

SIGNATURE BY DIRECTORS (IF APPLICABLE) AS ACCEPTANCE OF PERSONAL GUARANTEES:

* _____	* _____	* _____
Director signature	Director signature	Director signature
Name:	Name:	Name:
Date:	Date:	Date:

Please complete all areas specified by the *

SIGNATURE AS ACCEPTANCE OF TERMS & CONDITIONS:

*

You (the Customer)
Date:

Mossmont Nurseries Pty Ltd
Date:

*** SCHEDULE**

*** Item 1 (You):**

Customer Name:(write entity name if You are purchasing for an entity)

ABN/ACN:

Address:

.....

Telephone:

Email:

Contact person:

*** Item 2 (Directors of the company named above, including the Directors of the Trustee Company, if applicable)**

Name:

Name:

Address:

Address:

.....

.....

Telephone:

Telephone:

Email:

Email:

Additional directors:

Name:

Name:

Address:

Address:

.....

.....

Telephone:

Telephone:

Email:

Email:

SCHEDULE

OTHER CONDITIONS OF PURCHASE

Spring Budded Stone Fruit Tree \$9.85 + GST per tree

Delivery \$0.30 + GST per tree

WA and QLD Delivery to be arranged with Mossmont Nurseries Pty Ltd

The Customer must sign these Terms and Conditions and return them to Mossmont Nurseries Pty Ltd with a deposit for growing costs.

Peaches and Nectarines - Classic Yellow and Sub Acid Burchell varieties incur a royalty \$3.00 + GST per tree as of 2015.

Royalty on Cornerstone Rootstock \$1.50 + GST

Royalties also apply to Sardi Apricots and Sunworld varieties.

Trees on Cornerstone and GF677 rootstock - price on application.

Where royalties apply, a Non Propagation agreement in the form required by the owner of the plant variety must be signed and returned to Mossmont Nurseries Pty Ltd as a pre condition to delivery.

DEPOSIT AND PAYMENT REQUIREMENTS

1. 30% Deposit on placement of Order.
2. Payment of Balance 30 days after delivery.
3. Overdue Accounts will be charged interest at a rate of 2% per month.