Capalaba Nursery and Landscape Supplies – Terms & Conditions of Trade

1. Definitions

1.1 "Seller" means Gordon's Garden Supplies Pty Ltd ATF Gordon Family Trust T/A Capalaba Nursery And Landscape Supplies, its successors and assigns or any person acting on behalf of and with the authority of Gordon's Garden Supplies Pty Ltd ATF Gordon Family Trust T/A Capalaba Nursery And Landscape Supplies.

1.2 "Buyer" means the person/s or any person acting on behalf of and with the authority of the Buyer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:

(a) if there is more than one Buyer, is a reference to each Buyer jointly and severally; and

(b) if the Buyer is a part of a Trust, shall be bound in their capacity as a trustee; and

(c) includes the Buyer's executors, administrators, successors and permitted assigns.

1.3 "Goods" means all Goods or Services supplied by the Seller to the Buyer at the Buyer'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 (plus any GST where applicable) for the Goods as agreed between the Seller and the Buyer in accordance with clause 5 below.

1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Buyer and the Seller.

2.3 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without (a) liability on the part of the Seller and it shall be the responsibility of the Buyer to confirm the accuracy and reliability of the same in light of the use to which the Buyer (b) makes or intends to make of the Goods or Services.

2.4 The Buyer acknowledges that the supply of Goods on credit (c) shall not take effect until the Buyer has completed a credit (d) application with Seller and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Goods request exceeds the Buyer's credit limit and/or the account exceeds the payment terms, Seller reserves the right to refuse delivery.

2.6 The Buyer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and agreement of both parties. The Seller also reserves the right to halt all Services until such time as the Seller and the Buyer agree to such changes. The Seller shall not be liable to the (a) Buyer for any loss or damage the Buyer suffers due to the Seller exercising its rights under this clause. (b)

2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions (a)

3.1 The Buyer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged (b) or actual error(s) and/or omission(s):

(a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this contract; and/or

(b) contained in/omitted from any literature (hard copy and/or (c) electronic) supplied by the Seller in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller, the Buyer shall not be entitled to treat this contract as repudiated nor render it invalid. (d)

4. Change in Control (g)

4.1 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's name, (e) address, contact phone or fax number/s, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause. (f)

5. Price and Payment

5.1 At the Seller's sole discretion, the Price shall be either:

(a) as indicated on any invoice provided by the Seller to the Buyer; or

(b) the Price as at the date of delivery of the Goods according to (h) the Seller's current price list; or

(c) the Seller's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 The Seller reserves the right to change the Price:

(a) if a variation to the Goods which are to be supplied is requested; or

(b) if during the course of the Services, the Goods are not or cease to be available from the Seller's third party suppliers, then the Seller reserves the right to provide alternative Goods; or

(c) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.

5.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Buyer shall be required (a) to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.4 At the Seller's sole discretion, a non-refundable deposit may be required.

5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:

(a) before delivery of the Goods;

(b) thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices;

(c) the date specified on any invoice or other form as being the date for payment; or

(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.

5.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Buyer and the Seller.

5.7 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other contract for the sale of the Goods. The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer 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.

6. Delivery of Goods

6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:

(a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or

(b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.

6.2 At the Seller's sole discretion, the cost of delivery is in addition to the Price.

6.3 Any time specified by the Seller for delivery of the Goods is an estimate only. The Buyer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Seller will not be liable for any loss or damage incurred by the Buyer as a result of delivery being late. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7. Risk

7.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7.3 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Buyer's sole risk.

7.4 Due to the nature of the Goods the Seller does not guarantee the supply of any specific types of Goods at any particular time (including but not limited to the weather conditions, adverse growing season, etc.).

7.5 As strict control cannot be exercised by the Seller over the use of the Goods (including, without limitation, fertiliser use, weather, plant and soil conditions) the Seller accepts no responsibility or liability for any failure in performance, losses, damages or injuries (consequential or otherwise) arising from storage, handling, mixing, application or use of the Goods. The Buyer assumes all responsibility for the correct selection, use and application of the Goods.

7.6 The Buyer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Seller will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

7.7 The Buyer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural tissures, occlusions, lines, indentations and may fade or change colour over time; and

(a) expand, contract or distort as a result of exposure to heat, cold, weather; and

(b) mark or stain if exposed to certain substances; and

(c) be damaged or disfigured by impact or scratching.

8. Specifications

8.1 The Buyer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in the Seller's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Buyer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller.

9. Title

9.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:

(a) the Buyer has paid the Seller all amounts owing to the Seller; and

(b) the Buyer has met all of its other obligations to the Seller.

9.2 Receipt by the Seller 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, until ownership of the Goods passes to the Buyer in accordance with clause 9.1:

(a) the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request.

(b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Buyer 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 Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.

(d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.

(e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.

(f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Buyer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.

(h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

10. Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Buyer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Buyer.

10.3 The Buyer undertakes to:

(a) promptly 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 Seller may reasonably require to;

(b) (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);

(c) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

10.4 not register a financing change statement in respect of a security interest without the prior written consent of the Seller;

10.5 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller;

10.6 immediately advise the Seller 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.

10.7 The Seller and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

10.8 The Buyer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

10.9 The Buyer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.10 Unless otherwise agreed to in writing by the Seller, the Buyer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

10.11 The Buyer must unconditionally ratify any actions taken by the Seller under clauses 10.3 to 10.5.

10.12 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

11.1 In consideration of the Seller agreeing to supply the Goods, the Buyer 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 Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Buyer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

11.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer's true and lawful attorney/s 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 Buyer's behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

12.1 The Buyer must inspect the Goods on delivery and must (a) within seven (7) days of delivery notify the Seller in writing of (b) any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Buyer must notify 15.6 any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such (b) notification the Buyer must allow the Seller to inspect the Goods. (c)

12.2 Under applicable State, Territory and Commonwealth Law (d) (including, without limitation the CCA), certain statutory (e) implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded** (f) **Guarantees**).

12.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability (g) of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law. (h)

12.5 If the Buyer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 15.7 64A of Schedule 2.

12.6 If the Seller is required to replace the Goods under this clause (a) or the CCA, but is unable to do so, the Seller may refund any money the Buyer has paid for the Goods.

12.7 If the Buyer is not a consumer within the meaning of the CCA, (b) the Seller's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card 15.8 provided to the Buyer by the Seller at the Seller's sole discretion;

(b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;

(c) otherwise negated absolutely. 15.9

12.8 Subject to this clause 12, returns will only be accepted provided that:

(a) the Buyer has complied with the provisions of clause 12.1; and

(b) the Seller has agreed that the Goods are defective; and

(c) the Goods are returned within a reasonable time at the Buyer's cost (if that cost is not significant); and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible. **16.**

12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, 16.1 the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

(a) the Buyer failing to properly maintain or store any Goods;

(b) the Buyer using the Goods for any purpose other than that for which they were designed;

(c) the Buyer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Buyer failing to follow any instructions or guidelines provided by the Seller;

(e) fair wear and tear, any accident, or act of God. (a)

12.10 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the (b) Buyer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs. **17.**

12.11 Notwithstanding anything contained in this clause if the Seller 17.1 is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law. (a)

12.12 Subject to clause 12.1, customised, or non-stocklist items or (b) incidental items made or ordered to the Buyer's specifications are not acceptable for credit or return. (c)

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date (d) when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and (e) at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. 17.2

13.2 If the Buyer owes the Seller any money the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt **18.** (including but not limited to internal administration fees, legal 18.1 costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).

13.3 Further to any other rights or remedies the Seller may have under this contract, if a Buyer has made payment to the Seller, (a) and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 13 (b) where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this contract.

14. Cancellation

14.1 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation 19.2 (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause. 19.3

14.2 The Seller 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 Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation. 19.4

14.3 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the 19.5 cancellation (including, but not limited to, any loss of profits).

14.4 Cancellation of orders for Goods made to the Buyer's 19.6 specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Act 1988

15.1 The Buyer agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit 19.7 information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Buyer in relation to credit provided by the Seller.

15.2 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers and with related body corporates for the following purposes: 19.8

(a) to assess an application by the Buyer; and/or

(b) to notify other credit providers of a default by the Buyer; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with 19.9 other credit providers; and/or

(d) to assess the creditworthiness of the Buyer including the Buyer's repayment history in the preceding two (2) years.

15.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.

15.4 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):

(a) the provision of Goods; and/or

(b) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or

(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or

(d) enabling the collection of amounts outstanding in relation to the Goods.

15.5 The Seller may give information about the Buyer to a CRB for the following purposes:

(a) to obtain a consumer credit report;

(b) allow the CRB to create or maintain a credit information file about the Buyer including credit history.

The information given to the CRB may include:

(a) personal information as outlined in 15.1 above;

(b) name of the credit provider and that the Seller is a current credit provider to the Buyer;

(c) whether the credit provider is a licensee;

(d) type of consumer credit;

(e) details concerning the Buyer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Buyer no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of the Seller, the Buyer has committed a serious credit infringement;

(h) advice that the amount of the Buyer's overdue payment is equal to or more than one hundred and fifty dollars ($150).

The Buyer shall have the right to request (by e-mail) from the Seller:

(a) a copy of the information about the Buyer retained by the Seller and the right to request that the Seller correct any incorrect information; and

(b) that the Seller does not disclose any personal information about the Buyer for the purpose of direct marketing.

The Seller will destroy personal information upon the Buyer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.

15.9 The Buyer can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Buyer is not satisfied with the resolution provided, the Buyer can make a complaint to the Information Commissioner at www.oaic.gov.au

16. Dispute Resolution

16.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

17. Service of Notices

Any written notice given under this contract shall be deemed to have been given and received:

(a) by handing the notice to the other party, in person;

(b) by leaving it at the address of the other party as stated in this contract;

(c) by sending it by registered post to the address of the other party as stated in this contract;

(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address.

17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

18. Trusts

18.1 If the Buyer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Buyer covenants with the Seller as follows:

(a) the contract extends to all rights of indemnity which the Buyer now or subsequently may have against the Trust and the trust fund;

(b) the Buyer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Buyer against the Trust or the trust fund. The Buyer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

(c) the Buyer will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

(i) the removal, replacement or retirement of the Buyer as trustee of the Trust;

(ii) any alteration to or variation of the terms of the Trust;

(iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

19. General

19.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.

These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the Cleveland Courts in Queensland.

19.3 Subject to clause 12, the Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

The Seller may licence and/or assign all or any part of its rights and/or obligations under this contract without the Buyer's consent.

19.5 The Buyer cannot licence or assign without the written approval of the Seller.

The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Buyer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.

19.7 The Buyer agrees that the Seller may amend these terms and conditions by notifying the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Seller to provide Goods to the Buyer.

19.8 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.

19.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

Please note that a larger print version of these terms and conditions is available from the Seller on request.

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