

**1. Definitions**

- 1.1 “RYP” means Roskam Young Plants Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Roskam Young Plants Pty Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by RYP to the Client at the Client’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 RYP and the Client in accordance with clause 5 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with RYP’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and RYP.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on RYP’s website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

**3. Non-Propagation Agreement**

- 3.1 The Client agrees and acknowledges that varieties of gerberas and alstroemerias sold by RYP and listed on any documents are protected varieties belonging to Preesman Gerberas (distributed by Florist Holland BV) in the Netherlands.
- 3.2 The Client further acknowledges that these protected varieties are purchased solely for purpose of producing cut flowers and that propagation of these varieties is strictly prohibited and that heavy penalties apply on un-authorized propagation.
- 3.3 The Client further agrees:
  - (a) that he/she shall not sell, lease, lend or give away varieties protected by this agreement; and
  - (b) to notify the breeder or his agent should any mutations occur.

**4. Change in Control**

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

**5. Price and Payment**

- 5.1 At RYP’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by RYP to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to RYP’s current price list; or
  - (c) RYP’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 RYP reserves the right to change the Price if a variation to RYP’s quotation is requested. RYP may by giving notice to the Client at any time up to seven (7) days before delivery increase the Price of the Goods to reflect any increase in the cost to RYP beyond the reasonable control of RYP, (including, without limitation, foreign exchange fluctuations, taxes and duties, provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality or local authority enacted after the date of contract between the Client and RYP and the cost of labour, materials and other manufacturing costs).
- 5.3 At RYP’s sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by RYP, which may be:
  - (a) before delivery of the Goods;
  - (b) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by RYP.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and RYP.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to RYP an amount equal to any GST RYP must pay for any supply by RYP under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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 Client or the Client’s nominated carrier takes possession of the Goods at RYP’s address; or

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- (b) RYP (or RYP's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At RYP's sole discretion the cost of delivery is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then RYP shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 RYP 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.
- 6.5 Any time or date given by RYP to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and RYP will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client 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 Client, RYP is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by RYP is sufficient evidence of RYP's rights to receive the insurance proceeds without the need for any person dealing with RYP to make further enquiries.
- 7.3 If the Client requests RYP to leave Goods outside RYP's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 Any advice, recommendation, information, assistance or service provided by RYP in relation to Goods or Services supplied is given in good faith, is based on RYP's own knowledge and experience and shall be accepted without liability on the part of RYP and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 8. Title**
- 8.1 RYP and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid RYP all amounts owing to RYP; and
  - (b) the Client has met all of its other obligations to RYP.
- 8.2 Receipt by RYP 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to RYP on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for RYP and must pay to RYP the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for RYP and must pay or deliver the proceeds to RYP on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of RYP and must sell, dispose of or return the resulting product to RYP as it so directs.
  - (e) the Client irrevocably authorises RYP to enter any premises where RYP believes the Goods are kept and recover possession of the Goods.
  - (f) RYP may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client 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 RYP.
  - (h) RYP may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 9. Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client 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 that have previously been supplied and that will be supplied in the future by RYP to the Client.
- 9.3 The Client 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 RYP may reasonably require to;
    - (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 9.3(a)(i) or 9.3(a)(ii);

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- (b) indemnify, and upon demand reimburse, RYP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of RYP;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of RYP;
  - (e) immediately advise RYP 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.
- 9.4 RYP and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by RYP, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by RYP under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 10. Security and Charge

- 10.1 In consideration of RYP agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies RYP from and against all RYP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RYP's rights under this clause.
- 10.3 The Client irrevocably appoints RYP and each director of RYP as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

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

- 11.1 The Client must inspect the Goods on delivery and must within five (5) days of delivery notify RYP in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow RYP to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 RYP acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, RYP makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. RYP's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, RYP's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If RYP is required to replace the Goods under this clause or the CCA, but is unable to do so, RYP may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, RYP's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by RYP at RYP's sole discretion;
  - (b) any warranty to which RYP is entitled, if RYP did not manufacture the Goods is limited to parts only for a period of twelve (12) months from the date of purchase, unless otherwise stated in the Manufacturer's warranty documentation;
  - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
  - (b) RYP has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client'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.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, RYP 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 Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;

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- (c) the Client 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 Client failing to follow any instructions or guidelines provided by RYP;
  - (e) fair wear and tear, any accident, or act of God.
- 11.10 Notwithstanding anything contained in this clause if RYP is required by a law to accept a return then RYP will only accept a return on the conditions imposed by that law.

### 12. Intellectual Property

- 12.1 Where RYP has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of RYP.
- 12.2 The Client warrants that all designs, specifications or instructions given to RYP will not cause RYP to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify RYP against any action taken by a third party against RYP in respect of any such infringement.
- 12.3 The Client agrees that RYP may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which RYP has created for the Client.

### 13. Default and Consequences of Default

- 13.1 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 RYP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes RYP any money the Client shall indemnify RYP from and against all costs and disbursements incurred by RYP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RYP's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies RYP may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions RYP may suspend or terminate the supply of Goods to the Client. RYP will not be liable to the Client for any loss or damage the Client suffers because RYP has exercised its rights under this clause.
- 13.4 Without prejudice to RYP's other remedies at law RYP shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to RYP shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to RYP becomes overdue, or in RYP's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client 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 Client or any asset of the Client.

### 14. Cancellation

- 14.1 RYP 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 Client. On giving such notice RYP shall repay to the Client any money paid by the Client for the Goods. RYP shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by RYP as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for Goods made to the Client's 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 Client agrees for RYP to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by RYP.
- 15.2 The Client agrees that RYP may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to RYP being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by RYP for the following purposes (and for other purposes as shall be agreed between the Client and RYP or required by law from time to time):

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- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by RYP, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 RYP may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that RYP is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of RYP, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Client by RYP has been paid or otherwise discharged.
- 16. Unpaid Seller's Rights**
- 16.1 Where the Client has left any item with RYP for repair, modification, exchange or for RYP to perform any other service in relation to the item and RYP has not received or been tendered the whole of any moneys owing to it by the Client, RYP shall have, until all moneys owing to RYP 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.
- 16.2 The lien of RYP shall continue despite the commencement of proceedings, or judgment for any moneys owing to RYP having been obtained against the Client.
- 17. General**
- 17.1 The failure by RYP to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RYP'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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria which RYP has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in that state.
- 17.3 Subject to clause 11 RYP shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RYP of these terms and conditions (alternatively RYP's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 17.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by RYP nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 RYP may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.6 The Client agrees that RYP may amend these terms and conditions at any time. If RYP makes a change to these terms and conditions, then that change will take effect from the date on which RYP notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for RYP to provide Goods to the Client.
- 17.7 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.
- 17.8 The Client 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 on it.