

Trade Application Form



BUSINESS DETAILS: Sole Trader Partnership Limited Liability Company

NAME: _____

TYPE OF BUSINESS: _____

AUTHORISORS NAME: _____
Surname Christian Names

ADDRESS: _____

POSTAL ADDRESS: _____ POST CODE: _____

CONTACT PHONE: Home: _____ Work: _____

FAX NUMBER: _____ MOBILE NUMBER: _____

EMAIL: _____

PRINCIPALS: (Full names and addresses for Partners, Directors and major Shareholders)

(1) _____ D.O.B. _____
Names Residential Address

(2) _____ D.O.B. _____

TRADE REFERENCES: PHONE NO:

(1) _____

(2) _____

We agree to the terms and conditions attached to this Trade Application.

Signature _____ Date _____

Signatories Name _____

Company _____

Terms & Conditions of Trade

for Southern Woods Nursery Ltd (the Vendor)

These terms and conditions set out how we will do business with you.

1. General Conditions

- 1.1** All orders are accepted only on the basis that the Customer has accepted the order and the following terms and conditions of sale, which together shall constitute the full and complete contract between the Customer and the Vendor (**the Contract**).
- 1.2** Where the Consumer Guarantees Act 1993 applies to any goods, nothing in these Terms and Conditions affects the Customers rights and remedies under that Act. If acquired for the purposes of business then the Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 do not apply.

2. Price

- 2.1** All prices, and any offers for supply or price lists, are subject to variation without notice. All prices include GST and exclude freight (unless by prior arrangement). Trade prices to approved trade account holders exclude GST, which is payable in addition to the prices and at the same time.

3. Order Confirmation

- 3.1** On receipt of the Customer's order, the Vendor will acknowledge availability, or otherwise, of the goods required with an 'order confirmation', or 'service confirmation', which may request a non-refundable deposit of up to 25%, payable immediately.
- 3.2** If after 30 days no deposit is received the order may be cancelled without notice. Confirmed orders will be supplied in full subject to any shortages caused by conditions beyond our control.

4. Payments

- 4.1** The balance of the invoice is payable on collection. For **approved** trade account holders, (those who have completed our credit application form, and been approved) payment is due on the 20th of the month following delivery. Credit is given at the Vendor's absolute discretion and may be suspended at any time without notification to the Customer. Any different payment arrangements will only be valid if both parties agree in writing in advance.
- 4.2** Payment may be made direct to our bank account, or by cheque, credit card or cash.
- 4.3** The parties acknowledge that a new biosecurity levy may be introduced under the Biosecurity Act 1993 during the term of this Agreement. Where the Vendor is required to pay a biosecurity levy in respect of seedlings/cuttings sold pursuant to this Agreement, the parties agree that the purchase price payable in respect of those seedlings/cuttings shall increase by the amount of the applicable biosecurity levy.

5. Ownership

- 5.1** All goods remain the property of the Vendor until full payment has been received.

6. Default

- 6.1** Any overdue accounts will be charged compounding interest at 3% per month. The Vendor has the option to suspend the delivery of further goods until the account is paid in full.
- 6.2** The Customer agrees to indemnify the Vendor and pay, on demand, all costs incurred by the Vendor (including legal costs on a solicitor-client basis and debt collection costs) in the recovery or attempted recovery of unpaid moneys and/or the enforcement of these Terms and Conditions or the Security Interest contained in these Terms and Conditions.
- 6.3** If an Event of Default occurs, the Vendor may suspend or terminate any contract with the Customer, and all amounts the Customer owes the Vendor shall immediately become due and payable notwithstanding that the due date has not arisen.
- 6.4** An "Event of Default" means an event where:
- (a) The Customer defaults in any payment or the Customer fails to comply with the terms of any contract with the Vendor; or
 - (b) The Customer commits an act of bankruptcy; or
 - (c) The Customer enters into any composition or arrangement with the Customer's creditors; or
 - (d) The Customer does anything that makes the Customer liable to be put into liquidation, or a resolution is passed or an application is made for the Customer's liquidation; or
 - (e) A receiver, administrator or statutory manager is appointed over all or any of the Customer's assets.

6.5 A “Force Majeure” means a circumstance beyond the reasonable control of either party and which results in a party being unable to observe or perform on time an obligation under this Agreement.

6.6 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to Force Majeure and if a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended. If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 45 days, either party may immediately terminate the Agreement on providing notice in writing to the other party.

7. Delivery

7.1 Delivery may be by collection from the nursery or by freighting to a destination. The Vendor will arrange freight and invoice the costs direct to the Customer. Five working days' notice must be given to the Vendor prior to delivery or collection.

7.2 The goods become the responsibility and are at the sole risk of the Customer on leaving the nursery premises.

7.3 Bare-rooted (OG) stock ordered but not collected by the 31 August may be sold and any deposit paid lost.

7.4 The Vendor has the right to make deliveries in instalments. Failure or delay by the Vendor in making delivery shall not entitle the Customer to repudiate this Contract. At the end of the agreed delivery period, should the Customer still want the goods, the Vendor has the right to charge a maintenance fee of 10% per month on top of the purchase price until such time as the Customer takes delivery. In such circumstances the Vendor takes no responsibility for any deterioration of quality of the goods. The Customer is liable for goods ordered under this Contract, but not required by the Customer by the close of delivery period, and accordingly the Customer may be invoiced in full or part, and any deposit lost.

7.5 The Vendor may on-sell or otherwise dispose of goods not taken by the Customer at the end of the delivery period. The Customer has no right of credit if the undelivered goods are on-sold or otherwise disposed of.

7.6 The Customer agrees that if it collects the goods from the Vendor then it will comply with all of the Vendor's rules applicable to health and safety at that site. The Customer will assist the Vendor to obtain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before being controlled by elimination/isolation or minimisation of the risk of harm.

8. Claims

8.1 The right to reject non-conforming or defective goods shall be limited to rejection notified in writing to the Vendor within 48 hours of receipt of goods, and the goods returned to the Vendor with 48 hours of receipt at the Customer's expense.

8.2 The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. Disagreements over what constitutes a non-conforming or defective good should be resolved by discussions between the parties in the first instance. If a dispute arises ("Dispute"), the party claiming that a Dispute has arisen shall serve notice on the other party stating the subject matter and details of the Dispute. After receipt of the notice, senior management of both parties shall meet within ten (10) working days and shall attempt in good faith to resolve the Dispute. If the senior management fail to resolve the Dispute within twenty (20) working days of notice of the Dispute, then an independent arbitrator should be appointed as mutually agreed by both parties. The arbitrator's decision will be binding on both parties. Claims for goods damaged in transit should be made to the last carrier. This paragraph prevails over the following one (Limitation of Liability).

9. Limitation of Liability

9.1 The Vendor is not liable to the Customer for any loss or damage arising from delay or failure to perform its obligations due to any Force Majeure as outlined in clause 6.6.

9.2 Neither the Vendor or its employees or agents will be liable to the Customer for any claim for breach of contract (except as follows in the paragraph following) or Statute or breach of duty in tort (including negligence) or for any claim in equity or otherwise at law.

9.3 In the event of some issue with the goods the Vendor will first have the option to replace any defective goods in its discretion. The Customer's sole remedy shall be limited to breach of contract and the extent of any such liability shall be limited to an amount equal to the price charged for the particular goods or services to which the breach relates.

9.4 The Vendor will not, in any case, be liable for any other losses or damages whether general, exemplary, punitive, direct, indirect or consequential, including loss of business profits. No action may be brought against the Vendor unless notice of such claim is given to the Vendor within one week of Delivery of the Goods or provision of the Services. The Vendor shall be released from all or any liability unless proceedings are brought in a Court of competent jurisdiction within one year of the date of delivery of the Goods or provision of the Services.

10. Trays

10.1 A deposit of \$12.50 per holding or growing tray will be charged where applicable. A full credit will be issued when trays are returned within three months of purchase, in a reusable condition (to be determined by the Vendor at its sole discretion).

11. Indemnity

11.1 The Customer shall comply with all instructions of the Vendor in relation to the handling and use of the goods and services and, notwithstanding such compliance, the Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profits), which may be made against the Vendor or which the Vendor may sustain, pay or incur as a result of or in connection with the manufacture, sale or use of the goods or

services, unless such cost, claim, demand, expense or liability shall be directly and solely attributable to the negligence of the Vendor or the negligence of a duly authorized employee or agent of the Vendor.

12. Conditions of Sale

- 12.1** We take all reasonable care to have all trees, plants, seed, fungi etc to be of merchantable quality, and to be true to name and description, but any express or implied conditions, statements or warranty whether arising by statute or common law or otherwise as to merchantable quality, names or description are, to the full extent permitted by the law, hereby excluded. Errors and omissions are accepted.
- 12.2** With regard to consultancy advice given, be it paid or unpaid, no assurance or warranty is given to the accuracy, timing or extent of any projections or predictions given. Nor is there any guarantee given that any husbandry or management suggestions given will have any or all of the intended or predicted results.

13. Personal Property Securities Act 1999 ("PPSA")

- 13.1** This Contract constitutes a security interest in the goods for the purposes of the PPSA as security for payment by the Customer of all amounts due under this Contract, including any future amounts.
- 13.2** The Customer agrees to promptly execute and deliver to the Vendor all assignments, transfers and other agreements and documents and do anything else which the Vendor may deem appropriate to perfect the Vendor's security interest in any Products, or obtain the priority required by the Vendor or register (and renew registration) a financing statement for a security interest in favour of the Vendor in the Products.
- 13.3** To the extent that Part 9 of the PPSA applies, the Customer agrees that the provisions of sections 114(1)(a), 117(1)(c), 120, 122, 133 and 134 of the PPSA which are for the Customers benefit, or place any obligations on the Vendor in the Customers favour, shall not apply; and where the Vendor has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- 13.4** To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Customer hereby waives its rights under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5** You waive any right to receive a verification statement under the PPSA.

14. Use of Information

- 14.1** The Customer acknowledges that information (including personal information) collected by the Vendor concerning the Customer may be stored, used or disclosed in order to determine whether or not the Vendor will provide or continue to provide credit to the Customer, and enforce any obligations the Customer may have to the Vendor in respect of that credit. Failure to provide the personal information sought may result in the application being declined. The Customer authorises the Vendor on an on-going basis to collect information including in the Credit Application for the purpose of assessing the Customer's application for credit, including checking its present and continued credit worthiness, and for (if necessary) collecting any outstanding debt from the Customer and for direct marketing activities in respect of which emails and addresses may be entered into a database and the Vendor may use this information in any media communication for future promotional, marketing and publicity purposes ('the purposes set out above'). The Customer consents to the Vendor disclosing the information, as well as any default in payment by the Customer, to any credit or debt collection agency, and to any person/agency it appoints to collect any outstanding debt from the Customer and or guarantors, if necessary, for the purposes set out above.
- 14.2** The Customer acknowledges that the personal information will be held by the Vendor at its main trading address, and that the Customer has the right as a sole trader, partnership, trustee or as a director of a company to obtain access to and request correction of the personal information provided in accordance with the Privacy Act 1993. The Customer must notify the Vendor of any change in circumstances that may affect the accuracy of the information the Customer provided to the Vendor.
- 14.3** If information is provided to any credit or debt collection agency, they will hold that information on their systems and use it to provide their credit reporting service, including updating its credit reporting database and providing that information to other customers they have and you consent to that use and disclosure. The Vendor may request, and any person or organisation (including any credit or debt collection agencies) may provide, information about the Customer to the Vendor, both now and in the future, for the purposes set out above and the Customer consents to the Vendor seeking that information in the course of the Vendor's business and disclosure of that information to the Vendor.
- 14.4** The Customer authorizes the Vendor to obtain any personal information concerning the Customer that the Vendor considers necessary to perform the above purposes from any person or organisation. The Customer also authorizes any person from whom the Vendor requests information (including personal information) concerning the Customer, to release that information to the Vendor. The Customer also authorizes the Vendor to release any such information to any person for the purposes of determining credit worthiness, for communicating promotional activities and product information and for debt collection purposes.

15. General Provisions

- 15.1** These terms and conditions may apply to all transactions where the Vendor supplies Goods or Services to the Customer. If there is any inconsistency between these terms and conditions or any order submitted by the Customer or any other arrangement with the Vendor, these terms prevail unless otherwise agreed by the Vendor in writing. If any of these terms and conditions is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining provisions.
- 15.2** If the Vendor exercises or fails to exercise any right or remedy available to the Vendor, this shall not prejudice the Vendor's rights in exercising that or any other right or remedy. Waiver of any term of the contract must be specified in writing by the Vendor and signed by an authorized person.
- 15.3** The Customer may not transfer or assign all or any of the Customer's rights or obligations under this contract without the Vendor's prior written consent.

- 15.4** This contract and its terms are governed by, and shall be construed in accordance with, the laws of New Zealand. Both parties submit to the exclusive jurisdiction of the New Zealand Courts.
- 15.5** The Vendor may review and change these terms and conditions at any time and from time to time. Any such change will take effect from the date on which the Vendor posts the updated terms and conditions on its website and notifies the Customer of the change.