

## Terms of Trade - Wholesale

### 1. General

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- 1.1. When you enter any transaction with Blue Mountain Nurseries Limited (**BMN**), you acknowledge that:
- a. you have read and agree to these terms in full; and
  - b. BMN is transacting with you on the basis that these terms will apply in full to the transaction.

### 2. Payment

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- 2.1. The Purchase Price is in NZD and is made up of the following:
- a. The cost per plant plus GST
  - b. delivery costs (if applicable)
- 2.2. The cost per plant is the price recorded in the order form, catalogue or on our website.
- 2.3. Prices are subject to change without notice. We reserve the right to amend any pricing errors displayed due to human error, computer malfunction or other reason. We will notify you of any error in pricing and you may elect not to purchase the goods where the price has been corrected.
- 2.4. The Purchase Price is payable in the following manner:
- Orders to be delivered within a month:
- a. The Purchase Price is payable in full at the time of order; or
  - b. If a trade account is open with BWN then payment will be charged by invoice following delivery of the plants and is payable by the 20<sup>th</sup> day of month following the date of the invoice (**Due Date**).
- All other orders:
- c. A non-refundable deposit of 30% of the Purchase Price is payable upon submission of the order (**Deposit**); and
  - d. The balance of the Purchase Price will be charged by invoice following delivery of the plants and is payable by the Due Date.
- 2.5. Interest will accrue at 2% per month on all amounts outstanding from and including the Due Date until the date the unpaid amount is paid in full. BMN's right to require payment of interest does not limit any other rights or remedy available to the BMN.
- 2.6. At BMN's sole discretion, it may offer a 5% discount on all indent orders delivered during the months of April, May, June and July that exceed \$500.00 (excluding GST).

### 3. Orders

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- 3.1. The minimum quantity that may be purchased in any one variety and size of plant is as follows:
- a. 5cm, 7cm, 90mm and OLV pots - 20 plants
  - b. 140, 175, 6L, 250, 9L and 25L pots - 3 Plants
- Orders of plants less than the minimum quantity may be accepted at BMN's discretion at a premium cost of 50% extra per plant.
- 3.2. Once the order is submitted it may not be modified without the consent of BMN and the Purchase Price is payable in full as set out in these terms.

### 4. Delivery

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- 4.1. Delivery may be by collection or by freight, as agreed by the parties on confirmation of the order.
- 4.2. If delivery is to be made by freight:
  - a. BMN will arrange freight at the cost of the Purchaser, payable as part of the final invoice.
  - b. At BMN's sole discretion, it may offer free freight on orders within the South Island that exceed \$500.00 (excluding GST).
- 4.3. If delivery is to be made by collection. The Purchaser must arrange for collection of the plants, at its own cost, by the date agreed between the parties.
- 4.4. If the Purchaser fails to collect the plants or accept delivery by the agreed date, BMN may charge a storage fee of 25% of the Purchase Price per annum, calculated daily, until the plants are collected.

## **5. Risk and ownership**

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- 5.1. The plants remain the property of BMN until full payment has been received.
- 5.2. Risk for the plants transfers to the Purchaser upon delivery.

## **6. Plant condition**

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- 6.1. BMN will take reasonable care to ensure that all plants sold by it are true to name and description and are of merchantable quality. It is the Purchaser's responsibility to inspect all plants on delivery to ensure they meet the Purchaser's satisfaction prior to planting.
- 6.2. If the Purchaser wishes to reject non-conforming or defective plants, it must do so in writing to BMN within 48 hours of delivery.
- 6.3. In respect of any claim made by the Purchaser in accordance with clause 6.1 or 6.2, BMN will assess the claim and, at its sole discretion may:
  - a. replace the plants; or
  - b. refund part or all of the amounts paid.

## **7. Dispute resolution**

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- 7.1. The parties agree that they will attempt to resolve any dispute between them arising out of these terms in good faith in the first instance.
- 7.2. If such discussion fails to resolve the dispute, either party may (by written notice to the other) refer the dispute to the Disputes Tribunal.
- 7.3. The parties must continue to comply with their obligations under these terms during the dispute resolution process.

## **8. Force majeure**

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- 8.1. Neither party will be liable for any act, omission or failure of its obligations under these terms if and to the extent that such act, omission or failure arises from any cause beyond its control, or the effect of which cannot be reasonably predicted.
- 8.2. Those events may include, but shall not be limited to, Acts of God, machinery or equipment breakdown, acts of war, epidemics, government actions which are imposed after the date of this agreement, fire, lightning strikes, power failures, earthquakes, Weather condition or other disasters (**Force Majeure**).
- 8.3. The party unable to fulfil its obligations due to a Force Majeure will immediately;
  - a. notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of the failures; and
  - b. use all reasonable endeavours to avoid or remove the cause and perform its obligations as soon as possible.

8.4 Where any delay or failure by a party to perform its obligation due to Force Majeure exceeds 30 days, either party may immediately terminate the contract on providing notice in writing to the other party.

## **9. Limitation of liability**

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9.1. BMN is not liable to the Purchaser for any loss or damage arising from delay or failure to perform its obligations due to any Force Majeure as outlined in clause 8.

9.2. Where the Consumer Guarantees Act 1993 applies, nothing in this agreement affects the Purchaser's rights and remedies under that Act.

## **10. Purchaser's obligations**

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10.1. The Purchaser shall not transfer or assign all or any of their rights or obligations under these terms without BMN's prior written consent.

## **11. Default by Purchaser**

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11.1. The Purchaser agrees to indemnify BMN and pay, on demand, all costs incurred by BMN in the enforcement of these terms.

11.2. If the Purchaser defaults in any payment or fails to comply with these terms, BMN may suspend or terminate this agreement and all amounts owed by the Purchaser to BMN will become due and payable.

## **12. General provisions**

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12.1. These terms and conditions apply to all transactions where BMN supplies plants to the Purchaser.

12.2. If any provision contained in these terms is held to be void or unenforceable, this will not affect the enforceability of the remaining provisions.

12.3. Any waiver of these terms must be made in writing and signed by an authorised person.

12.4. These terms are governed by the law of New Zealand.

12.5. BMN may review and change these terms from time to time at its sole discretion.