WOODLEIGH NURSERY - TERMS AND CONDITIONS OF TRADE

By this Agreement dated .........................................................20

BETWEEN: Woodleigh Nursery, (“Woodleigh”)  

AND: ..................................................................................(the “Purchaser”)  

In these terms and conditions “Woodleigh” means Woodleigh Nursery being the supplier of goods to the purchaser named above (the “Purchaser”). Woodleigh supplies all goods to the Purchaser upon the terms and conditions set out herein, notwithstanding anything to the contrary that may be stated in the Purchaser’s inquiries or on the Purchaser’s orders or otherwise by the Purchaser. Without limiting the generality of the foregoing, the ordering of goods will be deemed to be acceptance by the Purchaser of these terms and conditions.

Price
1. A deposit of up to 50% of the value of the goods may at the discretion of Woodleigh be required on the placing of any order. Any deposit received is non-refundable.
2. The Purchaser shall pay the price indicated on the invoice or other similar document issued by Woodleigh.
3. The Purchaser shall pay Goods and Services Tax as rendered by Woodleigh and any other taxes, duties and levies payable in respect of the supply of goods as at the date of Woodleigh’s invoice.
4. The purchase price of goods may be different from the price quoted or the price current when the goods are ordered and, in this situation, Woodleigh may change its prices to the Purchaser without notice.
5. The Purchaser shall make all payments due to Woodleigh in full without any deductions whether by way of set-off, counterclaim, or any other equitable or legal claim.
6. The Purchaser acknowledges that the price of goods does not include the price of delivery.
7. Where trays are chargeable, a full credit for any trays returned in good condition will be given.

Terms of Payment
8. The Purchaser shall pay all amounts due to Woodleigh on the due date.
9. Where trays are chargeable, the following terms shall apply:
   (a) If the Purchaser defaults in any payment due to Woodleigh, Woodleigh may, without prejudice to any other rights granted hereby to the Purchaser, sell the goods and apply the proceeds of such resale, but the Purchaser shall not represent to any person that the Purchaser is acting for Woodleigh or has any authority to bind Woodleigh.
   (b) Woodleigh reserves the right to alter product prices, specifications and prices; however, this could differ from goods supplied. All prices are subject to change and Woodleigh reserves the right to amend prices as deemed necessary.
   (c) Woodleigh does not guarantee that items listed are in stock. If an order is placed for unavailable item Woodleigh will notify the Purchaser. If Woodleigh are unable to provide an item we will contact the Purchaser to discuss a possible replacement/alternative. It is the Purchaser’s responsibility to ensure that any goods ordered are suitable for the Purchaser’s requirements.
10. Woodleigh take the greatest care to ensure all seedlings are of merchantable quality and are true to named description, but any express or implied conditions, statement or warranty whether arising by statute or common law or otherwise as to merchantable quality or name or description are hereby excluded to the fullest extent permitted by law.
11. The parties acknowledge that while every effort is made to ensure clean and healthy nursery conditions are maintained, microorganisms may be present in goods.

Cancellations
27. Subject only to any obligatory statutory rights, no cancellation, addition, deletion, amendment, or variation of any kind of or to any contract of supply between parties may be made except with the consent of Woodleigh in writing.
28. Acceptance of any returned goods will be at the absolute discretion of Woodleigh.
29. The parties agree that loss or damage to goods in transit is not the responsibility of Woodleigh and any claims for loss or damage are to be made to the carrier. Woodleigh accepts no responsibility for any damage that may occur after dispatch of goods.
30. It is the Purchaser’s responsibility to inspect the goods on delivery and shall within seven (7) days of delivery notify Woodleigh of any alleged defect, shortage in quantity, damage or failure to comply with a description or quote.
31. Failure to notify Woodleigh within the prescribed timeframe will be deemed an acceptance of the goods free from defect or damage.

Claims and limitation of Liability
32. Subject only to mandatory liability or guarantee imposed by statute and without prejudice to any rights granted thereby to the Purchaser:  
   (a) All warranties descriptions, representations, or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability or purpose, or otherwise, and all specific conditions, even though such conditions may be known to Woodleigh, are expressly excluded.
   (b) Woodleigh shall not be liable in any way whatsoever to the Purchaser or any third party whether in tort (including negligence), contract or otherwise for any loss or damage whatsoever, whether direct, indirect, special or consequential and all such liability is expressly excluded; and
   (c) The liability of Woodleigh in respect of any order of goods shall in any event be limited to the lesser of the purchase price of the goods complained of, the cost of replacing defective goods, or the actual loss or damage suffered by the Purchaser.

In addition to any statutory rights and remedies that the Purchaser may have, Woodleigh may at its complete discretion replace or give credit for all goods supplied and established to be defective, provided that the following conditions are met:

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(a) All claims must be received by Woodleigh within (7) seven days of delivery of goods and where applicable the despatch number and or invoice number must be quoted by the Purchaser;

(b) All claims must specifically identify the defect and where possible in relation to goods be accompanied by the defective goods or a sample thereof; and

(c) Woodleigh shall have a reasonable opportunity to investigate the claim.

34. Where the Purchaser is acquiring from Woodleigh goods for resale or goods for the purposes of business, all supplies of goods to the Purchaser by Woodleigh shall be deemed to be made in trade for the purposes of the Purchaser’s business (as that latter term is defined in the Consumer Guarantees Act 1993). As between Woodleigh and the Purchaser the guarantee provisions of the Consumer Guarantees Act 1993 are expressly excluded and shall not apply to any supplies of goods by Woodleigh to the Purchaser.

Non-waiver

35. If at any time Woodleigh does not enforce any of these terms and conditions or grants the Purchaser time or other indulgence, Woodleigh shall not be construed as having waived that term or condition or its right to later enforce that or any other terms or conditions in this Agreement.

Severability

36. Where any provision of these terms and conditions are rendered void, unenforceable, or otherwise ineffective by operation or law then that shall not affect the enforceability or effectiveness of any other provision in these terms and conditions.

Variation of Conditions

37. These terms and conditions may only be varied by Woodleigh, in its absolute discretion and the only circumstances in which any variation to these terms and conditions will apply are where a duly authorized representative of Woodleigh has expressly agreed in writing to that variation.

Circumstances beyond Woodleigh’s control

38. Woodleigh shall not be liable for any failure to supply goods or meet any other obligation owed to the Purchaser where such failure results from or is influenced by fire, flood, industrial dispute, act of government (such as change in legislation, regulation, or order made under legislative authority) or other circumstances beyond Woodleigh’s control.

Executed as a deed this _____ day of ______________________20

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Signed by the Purchaser