

TERMS AND CONDITIONS
With THE BIG TREE COMPANY (2003) LTD
t/as ICON TREES



TERMS AND CONDITIONS

1. DEFINITIONS

- a. "Icon" shall mean The Big Tree Company (2003) Limited t/as Icon Trees, or any agents or employees thereof.
- b. "Buyer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods and services from Icon.
- c. "Goods" shall mean all plants, products and goods provided by Icon to the Buyer and shall include without limitation the supply of trees, plants and associated horticultural and arboricultural products and any fee or charge associated with the supply of Goods by Icon to the Buyer.

2. PAYMENT

- a. Payment of the Goods is due on delivery and shall be paid in cash unless Icon has agreed otherwise with the Buyer in writing.
- b. Payment for the Goods shall be made in full and without set off and within the terms agreed between Icon and the Buyer.
- c. Icon reserves the right to charge interest on any amounts unpaid in terms of the agreed terms of payment between Icon and the Buyer at the rate of 2% for the first and for each and any subsequent calendar month or part thereof that any amount due for payment remains unpaid.
- d. Failure by the Buyer to make payment to Icon on due date will constitute a default under these terms of trade and Icon will be entitled to immediately exercise all or any of its remedies in respect of the default.
- e. Disputed accounts: If any account is in dispute the undisputed portion of the account shall be payable in accordance with the normal terms of trade as provided in this terms of trade document.
- f. Receipt by Icon of any cheque shall not be deemed to be payment until the cheque has been honoured and cleared by Icon's bankers.
- g. The Buyer agrees to pay Icon's debt collection agency costs and/or costs and expenses on a solicitor client basis incurred by Icon as a result of the failure of the Buyer to pay in full the Buyer's account with Icon in accordance with these terms of trade.

3. PRICE

- a. Goods are sold and will be invoiced at the price charged by Icon at the date of dispatch unless a prior agreement has been made regarding price.
- b. All prices are subject to change without prior notice.
- c. The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Icon between the date of the contract and delivery of the Goods.
- d. In circumstances where Goods are required to be held by Icon for a period of time prior to the Buyer acquiring them, a holding charge may be incurred by the Buyer.
- e. All prices are subject to Goods and Services Tax and any other taxes or duties that may apply.

4. QUOTATION

- a. Where a quotation is given by Icon for Goods:
 - i. Unless otherwise stated the quotation shall be valid for thirty (30) days from the date of issue; and
 - ii. The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - iii. Icon reserves the right to alter the quotation because of circumstances beyond its control such as the unavailability of Goods quoted for.
- b. Where Goods are required in addition to the quotation the Buyer agrees to pay for the additional cost of such Goods.

5. RISK

- a. Where the Buyer arranges delivery of the Goods, or delivery is arranged on behalf of the Buyer by Icon, then the Goods are at the Buyer's risk immediately Icon gives possession of the Goods directly to the Buyer (or places them on the Buyer's site) or possession of the Goods is given to a carrier, courier, or other bailee for the purposes of transmission to the Buyer.
- b. The time agreed for delivery shall not be an essential term of this contract.

6. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- a. Title in any Goods supplied by Icon passes to the Buyer only when the Buyer has made payment in full for all Goods provided by Icon and of all other sums due to Icon by the Buyer on any account whatsoever. Until all sums due to Icon by the Buyer have been paid in full, Icon has a security interest in all Goods.
- b. If the Goods are attached, fixed, or incorporated into any property of the Buyer by the Buyer or any third party, title in the Goods shall remain with Icon until the Buyer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be assigned to Icon as security for the full satisfaction by the Buyer of the full amount owing between Icon and Buyer.

- c. The Buyer gives irrevocable authority to Icon to enter any premises occupied by the Buyer or on which Goods are situated at any reasonable time after default by the Buyer or before default if Icon believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Icon shall not be liable for any costs, damages, expenses or losses incurred by the Buyer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Icon may either resell any repossessed Goods and credit the Buyer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Buyer's account with the invoice value thereof less such sum as Icon reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- d. Where Goods are retained by Icon pursuant to clause 6(c) the Buyer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- e. The following shall constitute defaults by the Buyer:
 - i Non payment of any sum by the due date.
 - ii The Buyer intimates that it will not pay any sum by the due date.
 - iii Any Goods are seized by any other creditor of the Buyer or any other creditor intimates that it intends to seize Goods.
 - iv Any Goods in the possession of the Buyer are materially damaged while any sum due from the Buyer to Icon remains unpaid.
 - v The Buyer is bankrupted or put into liquidation or a receiver is appointed to any of the Buyer's assets or a landlord distains against any of the Buyer's assets.
 - vi A Court judgment is entered against the Buyer and remains unsatisfied for seven (7) days.
 - vii Any material adverse change in the financial position of the Buyer.
- f. If the Credit Repossession Act applies to any transaction between the Buyer and Icon, the Buyer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

7. DISPUTES

- a. No claim relating to Goods will be considered unless made:
 - i Within two (2) days for plants supplied; and
 - ii Within seven (7) days for products and services supplied.
- b. No returns accepted without prior approval.

8. LIABILITY

- a. All Goods are available for inspection by the Buyer and it is acknowledged by the Buyer that the Goods are in a good and healthy condition at the time of purchase. If the Buyer does not inspect the Goods prior to purchase then the Buyer is solely responsible for the Goods purchased.
- b. All 'SALE GOODS' are sold as is where is and Icon Trees are not liable to replace or refund these trees.
- c. The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Icon which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Icon, Icon liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- d. Except as otherwise provided by clause 8(b) Icon shall not be liable for:
 - i Any loss or damage of any kind whatsoever, arising from the supply of Goods to the Buyer by Icon, including consequential loss whether suffered or incurred by the Buyer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by Icon to the Buyer; and
 - ii The Buyer shall indemnify Icon against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Icon or otherwise, brought by any person in connection with any matter, act, omission, or error by Icon its agents or employees in connection with the Goods.
- e. If, contrary to the disclaimer of liability contained in these terms and conditions of trade, Icon is deemed to be liable to the Buyer, following and arising from the supply of Goods by it to the Buyer, then it is agreed between Icon and the Buyer that such liability is limited in its aggregate to the invoice value of the Goods provided.
- f. Icon is not liable for and takes no responsibility for Goods held in its nursery on behalf of the Buyer but will use its best endeavours to look after the Goods while they are in its care.

9. WARRANTY

- a. Icon takes the greatest care to have all plants sold by it, to the best of its knowledge, to be true to name and description, but gives no warranty express or implied as to description, growth, quality of productiveness, suitability for any purposes or tolerance to any conditions.

10. PRIVACY ACT

- a. The Buyer authorises Icon to collect, retain and use any information about the Buyer, for the purpose of assessing the Buyer's credit worthiness or enforcing any rights under this contract.
- b. The Buyer authorises Icon to disclose any information obtained to any person for the purposes set out in clause 10(a).
- c. Where the Buyer is a natural person the authorities under clauses 10(a) and (b) are authorities or consents for the purposes of the Privacy Act 1993.

11. CONSUMER GUARANTEES ACT

- a. The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Buyer acquires Goods from Icon for the purposes of a business in terms of section 2 and 43 of that Act.

12. ACKNOWLEDGEMENT

- a. The Buyer acknowledges that it has received a copy of these Terms and Conditions and in particular that these Terms and Conditions constitute a "Security Agreement" for the purposes of the PPSA. The Buyer further acknowledges that the provisions of clause 6 (TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)) are intended to create a Purchase Money Security Interest in such goods and acknowledges that Icon may register a Financing Statement or Financing Change Statement under the PPSA in the Personal Property Securities Register in respect of these Terms and Conditions.

13. SAMPLES

- a. The Buyer agrees and accepts that Goods may vary from the original sample shown.

14. MISCELLANEOUS

- a. Icon shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control, such as extremes in weather, storm damage or disease.
- b. Subject to complying with any applicable law, Icon may change these Terms and Conditions at any time by giving the Buyer not less than 30 days' notice.
- c. Failure by Icon to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Icon has under this contract.
- d. If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- e. If the Buyer defaults in payment then the Buyer agrees that the amount of such default gives rise to a legal or equitable estate or interest in the Buyer's land which will entitle Icon to enter a caveat against the Buyer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof.
- f. Icon takes no responsibility for damage to driveways or footpaths where a company vehicle is requested or required to leave the road to facilitate the supply of Goods.
- g. These terms and conditions shall be governed by New Zealand law.