

**ZEE SWEET Pty Ltd (ACN 083 138 443)**  
**Conditions of Sale**

1. For the purposes of these Conditions, 'goods' means botanical plant material including but not limited to trees, cultivars, shrubs, rootstock and propagating material being goods of a kind which are not ordinarily acquired for personal, domestic or household use or consumption but are acquired for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land. We will take reasonable care to ensure that the goods are of the cultivar and/or rootstock ordered and, where labels are affixed, that the goods will be correctly labelled.
2. Subject to Condition 3, and with the exception of any warranties expressly provided in our catalogues, to the maximum extent permitted by law, we make no warranties or representations and you release us from all liability for any loss, claim, damage or injury suffered in connection with the supply of the goods.
3. Our liability to you in respect of any non-excludable warranty or condition will be limited to the maximum extent possible (as we may decide) to either the replacement of the relevant goods, or the supply of equivalent goods, or the payment of the cost of replacing the relevant goods, or of acquiring equivalent goods and, to the extent permitted by any applicable laws, we will in no event be liable for any loss of profits or other loss or damage whatsoever.
4. To the extent permitted by law, we are not liable and you must indemnify us in respect of all physical or financial injury, loss or damage, or for consequential loss or damage of any kind arising out of the supply of the goods or arising out of your negligence or in any way whatsoever.
5. You agree that growth and performance of the goods is dependent on a wide range of conditions beyond our control and we make no guarantee as to the suitability of any of the goods for any specific use. We do not recommend any one particular type of our goods in preference to any other, or claim to be an authority on any one of our goods. All information is believed to be correct and is given in good faith. To the extent permitted by any applicable laws, we disclaim all liability for loss suffered as a result of reliance on any information provided by us. You accept responsibility for your own choices of goods, irrespective of any recommendations, or advice or information provided by us.
6. Whilst we will use all reasonable endeavours to ensure that the goods sold to you are propagated using the best available propagation material available at the time of propagation, we will not be responsible for any loss or damage caused by pests, diseases and/or viruses latent or patent. Any liability in this regard will be limited on the same basis as set out in Condition 3 above.
7. Wherever possible all other conditions and warranties which are implied by the law or by trade usage including, in particular, any identity, truthfulness to type, merchantability or fitness of the goods for any particular purpose are hereby expressly excluded.
8. We will use all reasonable endeavours to ensure that the goods are available for delivery by the date or dates (if any) specified in any of our documents but will not be liable if we are unable to have the same available for delivery by the specified date or dates.
9. Except where some other arrangement has been made (e.g. C.O.D. or cash in advance), our terms of payment are net 30 days from date of delivery, or, if you fail or refuse to take delivery, 30 days from such failure or refusal. Interest will be charged on overdue accounts (current interest rate supplied on application). We reserve the right at our sole discretion to suspend any trading account including but not limited to those that are not in compliance with our trading terms and conditions.
10. You are not entitled, as of right to cancel any order placed by you. We may allow you to cancel an order but this will be entirely at our discretion with such conditions as we may impose. If, however, you do cancel an order without our written permission or fail or refuse to take delivery of any of goods, we will be entitled to resell those goods if possible, without prejudice to any other rights or remedies available to us. Any deficiency on resale will be a debt due by you to us payable on demand. We may require you to pay an amount to us when placing an order for the purpose of securing the order ("holding deposit"). We will hold this holding deposit as a stakeholder until our contract with you has been perfected at which stage it will form part of the purchase price. Our acceptance of the holding deposit will not constitute an acceptance of any offer made by you and will not bring into force any binding legal agreement for us to supply you with the goods ordered. Where you have paid a holding deposit to us and you cancel an order without our written permission or fail or refuse to take delivery of any of the goods then the holding deposit will be forfeited to us. You acknowledge that the holding deposit represents a genuine pre-estimate of our minimum probable loss in such circumstances.
11. You acknowledge that the propagation of goods is subject to many influences, some of which are not within our control and some of which are within our control. Any of these influences may affect our ability to deliver the goods that have been ordered. We will not be liable to you if our ability to deliver the number of goods ordered is affected by any of these influences.
12. Property in the goods will not pass to you as licensee under your Zee Sweet Growers Agreement until you have paid for them in full but the risk in the goods will be yours from the time at which we have them available for delivery. You understand that you are a bailee or custodian of the goods on our behalf until such time as the goods and each of them have been paid for in full in accordance with the terms and conditions of the Zee Sweet Growers Agreement. As custodian you are not allowed to sell them or alter them in any manner (except for taking all necessary steps to maintain the goods in the condition in which they are supplied) and you must insure the goods for their full insurable value until they have been paid for in full in accordance with the terms and conditions of the Zee Sweet Growers Agreement. If however you do sell them then the proceeds of such sale will be deemed to be held on trust for Zee Sweet until they and each of them have been paid for in full and if you alter them in anyway prior to them being paid for in full then you do so at your risk.
13. PPSA application
  - 13.1 If a term used in these conditions of sale has a particular meaning under the *Personal Property Securities Act 2009* (Cth) (**PPSA**), it has the same meaning in these conditions of sale.
  - 13.2 You acknowledge that:
    - (a) these conditions of sale constitute a security agreement for the purpose of the PPSA;
    - (b) a security interest is created by these conditions of sale and attaches to every item comprising the goods supplied to you (and their proceeds) including all goods supplied after the date when these conditions of sale were accepted or adopted by you;
    - (c) the attachment of this security interest is immediate upon receipt of the goods by you;
    - (d) you have received value at that first date of delivery of the goods; and
    - (e) there has been no agreement to postpone the time for attachment of the security interest granted to us.
  - 13.3 You agree that you will:
    - (a) at our request or the request of one of our agents, representatives, licensees or associates, execute all documents or take any step which will assist us to register our security interest in the goods on the PPSR or to otherwise perfect the security interest granted;
    - (b) ensure that our security interest created by these conditions of sale remains perfected until all of your obligations are discharged and fully satisfied;
    - (c) keep full and complete records of the goods and their location on your property;
    - (d) not, without our written consent, sell, lease, dispose of, create a security interest in, grant a lien over or mortgage the goods or any interest in them;
    - (e) upon default, non-payment of any amount owing or a breach of any other obligation, and at our request, without limiting any other rights which we may have, return the goods to us including any Agriculture crops (such as fruit) which form part of the collateral;
    - (f) not change your name, address, contact details or any other details required to be included in the financing statement without providing us with prior written notice;
    - (g) not register any 'financing change statement' or a 'change demand' without our prior written consent.
- 13.4 So far as permitted under the PPSA you waive your right to receive:
  - (a) a verification statement or financing change statement or a statement of account on sale of the goods;
  - (b) any notice required by the PPSA, including but not limited to (i) a notice that we intend to sell the goods on enforcement of the security interest granted; or (ii) a notice that we intend to retain the goods on enforcement of the security interest granted.
- 13.5 Neither we or you will disclose information of the kind mentioned in section 275(1) of the PPSA, except as required by law, these conditions of sale or the circumstances required by section 275(7)(b) to (e) of the PPSA. You acknowledge and agree that this condition 13.5 constitutes a confidentiality agreement for the purpose of section 275(6) of the PPSA.
14. You must notify us of any alleged shortages or damage to the goods within 48 hours of delivery and confirm same to us in writing within 14 days otherwise claims will not be recognised. We require the opportunity to inspect any of the goods relative to any form of claim following delivery if you believe that there are any shortages or the goods are defective in any way.
15. We will arrange delivery at your cost.
16. If you are a company or a partnership then the person who signs our documents on your behalf warrants that she or he has the authority to sign on your behalf and also separately personally guarantees payment to us of the purchase price and interest (if any) payable by you.
17. All goods are supplied by Zee Sweet subject to the Zee Sweet Growers Agreement and the Zee Sweet Non Propagation Agreement and the recipient of such goods signing these Agreements in their standard form. Where applicable and at our request you must sign one of our standard Non Propagation Agreements or Grower Agreements prior to delivery. You agree to pay the royalties as specified in any such agreement. Your refusal to sign such agreement will be deemed to be an unauthorised cancellation of the order by you and the provisions of Condition 10 above will apply. So far as permitted by law, in the event that the third party owner of the cultivar and or rootstock has any preferential rights of ownership to any sport or mutation derived from that cultivar and or rootstock then you agree to acknowledge and accept those preferential rights and not to challenge any such rights.
18. This Condition 18 applies to the sale of all commercial fruiting cultivars.
  - 18.1 You agree to pay a royalty payment for any cultivar to which a royalty payment applies, whether that royalty applies to the scion or the rootstock component of the cultivar or to both the scion and rootstock components of the cultivar or to the fruit of such cultivar.
  - 18.2 You agree that you must not propagate or allow or assist any other party to propagate the goods or to breed the goods in any way. The meaning of "Propagation" is that defined in the Plant Breeder's Rights Act 1994.
  - 18.3 We retain all rights to propagation.
  - 18.4 You agree and acknowledge that the ownership and or control of the goods does not pass to any other party, including but not limited to in conjunction with any transfer of property ownership and or leasing rights of land upon which the goods are growing until such time as the proposed other party enters into and signs a non-propagation agreement and Growers Agreement for the goods in a form that we provide with terms and conditions that are acceptable to us. Any purported transfer of ownership of the land upon which the goods are growing or the goods themselves without our prior written consent will entitle us to enter the property where the goods are growing and to destroy the goods. You agree to indemnify us against any damages that may be incurred by us in the event that we take such action.
  - 18.5 You agree and acknowledge that on providing you with 24 hours notice, that we, or an agent that we will nominate, has the right to enter the property where the goods are growing to inspect and take an inventory of your entire planting of the goods covered by these Conditions of Sale. You also agree that you allow us free and unrestricted access to your properties and cultivar records for this purpose and that as part of this inspection process we may take any photographs and or plant material samples and copies of any relevant documents as we reasonably deem to be appropriate. You undertake that you will fully co-operate in any such inspection and audit process.
  - 18.6 If any of the goods are being grown on a property where you do not own the freehold, then you undertake to obtain the permission of the registered proprietor/owner to allow us to enter the property and undertake the inspection and audit as intended in Condition 18.5.
19. These Conditions of Sale are irrevocable and can only be rescinded in accordance with these Conditions of Sale or with our written consent signed by an Authorised Company Officer.
20. None of our agents, representatives, licensees or associates are authorised to make any representations, statements, conditions or agreements not confirmed in writing by us and we will not be bound by any such unauthorised statements.
21. You undertake to provide us with not less than twenty one (21) days prior written notice of any proposed change in your business name and or any changes in your details (including but not limited to, changes in your address, telephone and facsimile numbers, or business practice).
22. You agree and undertake to fully indemnify us in regard to any breach of the provisions of these Conditions of Sale by you or by your agents, employees, or representatives.
23. If you are responsible for, or allow a breach of these Conditions of Sale, then we may seek damages from you.
24. This contract will be governed by the laws of the State of Victoria and only the Courts of the State of Victoria will have jurisdiction over any dispute arising under this contract.
25. GST Act means A Tax System (Goods and Services Tax) Act 1999 (as amended) and all italicized terms in this Condition 25 have the same meaning as set out in section 195-1 of the GST Act. When GST applies to any supply made under these Conditions of Sale, the party which made the supply (Supplying Party) may in addition to the amount payable for the goods under this agreement, but subject to having issued a valid tax invoice, recover from the other party (Receiving Party) an additional amount of GST, such amount to be calculated in accordance with the GST Act. Both parties must comply with their other respective obligations under the GST Act.
26. Your order, if accepted, will be on these Conditions of Sale only. Any variations or inconsistent terms suggested by you, including on any purchase order, will be excluded.