

TERMS OF TRADE.

In these Terms of Trade we have used **we, us,** and **our** to refer to Little Botanica Limited and **you** to refer to our Client/Customer. By ordering Work from us, you agree to these Terms of Trade to the exclusion of your terms (if any).

1. OWNERSHIP

- 1.1 Ownership of Goods supplied under these Terms of Trade remains with us until payment for the Goods is made in full.

2. RISK AND DELIVERY OF GOODS

- 2.1 Delivery occurs at the time possession of the Goods passes to you (or a person nominated by you) from us. The risk in Goods supplied passes to you on delivery.

3. ESTIMATES

- 3.1 Unless stated otherwise, any price we give you for Work is an estimate (Estimate) on a plus GST basis of the anticipated cost for us to complete that Work. The Estimate is subject to clause 4 below.
- 3.2 The Estimate is open for acceptance for 7 days after it is dated unless withdrawn by us prior to acceptance.
- 3.3 We will not commence the Work until you have accepted the Estimate in writing and signed a copy of these Terms of Trade.
- 3.4 Once an Estimate has been accepted, you agree that you shall not be entitled to reduce the scope of the Work from that on which the Estimate was based.
- 3.5 For the avoidance of doubt, the following minimum spend/price for the Work shall apply:
 - a. Friday – Sunday bookings during the period of 1 September – 30 April: \$4,000.00 plus GST; and
 - b. All other times/periods during the year: \$1,500.00 plus GST (unless expressly agreed by us).

4. PRICE

- 4.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Work, you will pay to us our actual cost of completing the Work (Actual Cost) which will be calculated by totalling the following:
 - a. the number of hours of service multiplied by the hourly rates for the workers involved in providing the Work;
 - b. any disbursements (including without limitation delivery costs) incurred by us on your behalf;
 - c. the cost of any flowers/foilage or other Goods, Hire Equipment, or Third-Party Hire Equipment supplied by us as part of the Work.
- 4.2 The Actual Cost and all prices are plus GST and other taxes which are payable by you in New Zealand dollars.
- 4.3 Disbursements incurred by us on your behalf and the cost of any Third-Party Hire Equipment may include a reasonable mark-up by us.
- 4.4 You acknowledge and agree that the Actual Cost of any disbursements, flowers/foilage or other Goods, Hire Equipment, or Third-Party Hire Equipment supplied by us as part of the Work may vary from the Estimate given as at the date of these Terms of Trade.
- 4.5 In the event these Terms of Trade are terminated in accordance with clause 12.1(e) or the Event is cancelled by you under clause 6.2, you must immediately pay us the Actual Cost at the termination date.

5. TERMS OF PAYMENT

- 5.1 We may require you to pay a non-refundable deposit, being an advanced payment for the Work (Deposit).

- 5.2 In the event of a Postponement, we agree to hold the Deposit (subject to any deduction permitted herein) to be transferred to an alternative date or event, provided a replacement date is booked within 12 months of the scheduled date of the Event. Any such replacement date shall be subject to our prior approval and availability and may require payment of an additional Deposit (at our discretion).
- 5.3 Payment for the Work (and any associated expenses and disbursements) is due 7 days following the date of our invoice except where we have agreed in writing that other terms will apply (Due Date). In any event, payment of any invoices issued to you are due no later than 14 days prior to the date of the Event.
- 5.4 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 15% per annum, which will accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
- 5.5 Notwithstanding clause 5.4, if payment is outstanding for 7 days following the Due Date, we may suspend performing the Work on credit until the date of payment in full.

6. CANCELLATION AND POSTPONEMENT

- 6.1 Where the Event cannot reasonably proceed on the scheduled date due to a cause which is beyond your control and arises due to no fault or delay by you, we will use reasonable endeavours to arrange a suitable replacement date.
- 6.2 If you advise us that you are cancelling the Event or where no suitable replacement date can be agreed within a reasonable period (pursuant to clause 6.1) (Notice), we shall be entitled invoice you for the Actual Cost of the Work completed prior to the date of Notice, with the amount of such invoice to be deducted from the Deposit. Any balance outstanding is payable in accordance with clause 5.
- 6.3 Where the date of the Event is moved to an agreed date between us and you (Postponement) a fee to cover our Actual Cost of the Work completed prior to the date of Postponement, and to arrange an alternative date for the Event will apply. We shall be entitled to invoice you for the Actual Cost of such Work, together with an administration fee equal to 10% plus GST of the Estimate we have provided you. The amount of such invoice shall be deducted from the Deposit. Any balance outstanding is payable in accordance with clause 5.
- 6.4 In the event of a cancellation or Postponement, we will use reasonable endeavours to cancel any orders we have placed with our suppliers for flowers/foilage or other Goods or disbursements ordered or incurred on your behalf. However, no guarantee is provided as to our ability to cancel such orders.
- 6.5 In accordance with clause 4.4, in the event of a Postponement, it is likely that the Actual Cost of any disbursements, flowers/foilage or other Goods, Hire Equipment, or Third-Party Hire Equipment supplied by us as part of the Work will vary from the Estimate given as at the date of these Terms of Trade.

7. HIRE POLICY

- 7.1 All vases, vessels, candleholders, baskets, containers and other hire items supplied by us (Hire Items) remain our property and must either remain at the Event venue for collection or be returned to our premises, unless otherwise arranged.

- 7.2 Any items sub-hired by us on your behalf (Third-Party Hire Items) are subject to the terms and conditions set out by the relevant hire company involved.
- 7.3 Any Hire Items or Third-Party Hire Items which are lost, broken, damaged, or not returned may be charged to you at reasonable replacement value (as determined by us or by the relevant hire company, as applicable).
- 7.4 You agree to notify us if there is any loss, breakage, or damage to any Hire Items or Third-Party Hire Items, and agree to indemnify us against any cost, loss, damages or claims suffered by us in respect of the same.

8. SUBSTITUTION

- 8.1 If any Hire Items, Third-Party Hire Items, flower/foilage varieties, or other Goods to be supplied by us are unavailable or not reasonably procurable, we reserve the right to substitute items or flowers/foilage of a similar appearance, quality and nature.
- 8.2 Where reasonably possible, we shall consult with you before making such a substitution and shall use reasonable endeavours to confirm your preference with respect to any available options. Notwithstanding the provisions in this clause we reserve the right to make the final election with respect to any such substitution (at our discretion).

9. RUBBISH

- 9.1 Unless expressly specified in any scope of Works or Estimate provided, floral clean-up and/or removal is not included in the Works and shall be your responsibility.
- 9.2 You agree that if we are required or requested by the Event venue to undertake any unarranged floral clean-up and/or removal, we shall be entitled to charge you the Actual Cost of completing such Work, together with an administration fee equal to 10% plus GST.

10. WARRANTIES

- 10.1 We will perform the Work with reasonable skill, care and diligence in a professional manner, and endeavour to ensure that the Work is performed in accordance with your reasonable requirements.
- 10.2 Notwithstanding the above, we will not be liable for any delays or associated costs from any delays, caused by circumstances beyond our control.
- 10.3 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 10.4 Where you acquire goods and/or services from us for the purposes of a business:
- a. the parties acknowledge and agree that:
 - i. you are acquiring the goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
 - ii. the goods and/or services are both supplied and acquired in trade from the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
 - b. you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.

11. LIMITATION OF LIABILITY

- 11.1 Except to the extent that the law prevents us from excluding liability, we will not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Work or Goods provided by us to you.
- 11.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the amount of the Actual Cost.

12. DEFAULT

- 12.1 If you fail to pay any money owing on the Due Date or are otherwise in breach of your obligations under these Terms of Trade, in addition to any remedies we may have at law, we may do one or more of the following:
- a. suspend the Work in accordance with clause 5.5 ;
 - b. charge default interest in accordance with clause 5.4 ;
 - c. enter on to your premises and repossess any Goods which have not been paid for in full;
 - d. enter onto your premises and repossess any Hire Items or Third-Party Hire Items; and
 - e. immediately terminate these Terms of Trade by notice in writing to you.

13. INTELLECTUAL PROPERTY OWNERSHIP

- 13.1 We are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) in the Work, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
- 13.2 We will retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.
- 13.3 You must not attribute the Work to anyone other than us or remove any of our trade marks, signatures, logos or similar from our Work. Further, you shall not publish, or permit any third party to publish imagery of the Work in any magazine, website, blog, or similar publication without attributing the Work to us.
- 13.4 We reserve the right to use any images taken of the Work for our own marketing, social media and advertising purposes.

14. EXCLUSIVITY

- 14.1 You agree that in order to protect the goodwill of our brand, we shall be the exclusive florists for the Event. For the avoidance of doubt, no other floral arrangements shall be permitted whether from an alternate commercial provider or from any private or personal source.

15. PRIVACY OF INFORMATION

- 15.1 You authorise us:
- a. to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
 - b. to disclose information about you:
 - i. to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - ii. to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.

16. NOTICES

16.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors).

17. CONFIDENTIALITY

17.1 You will at all times treat as confidential all non-public information and material received from us and must not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

18. COSTS

18.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade.

19. JURISDICTION

19.1 These Terms of Trade are governed by and construed according to the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these Terms of Trade.

20. ASSIGNMENT

20.1 You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade.

21. DISPUTES

21.1 Any claim or dispute arising under these Terms of Trade will be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

22. FORCE MAJEURE

22.1 We will not be liable for any failure or delay to perform the Work if the failure or delay arises directly or indirectly from a cause reasonably beyond our control.

23. SURVIVAL

23.1 This clause 23 and clauses 1, 2, 5, 9, 11, 12, 13, 14, 17, 19, 21 and 24 and any other provision which by its nature is intended to survive the termination or expiration of these Terms of Trade will survive the termination or expiration of these Terms of Trade or completion of the Work.

24. DEFINITIONS AND INTERPRETATION

24.1 In these Terms of Trade unless the context otherwise requires:

- a. **Goods** has the meaning given to it in the Personal Property Securities Act 1999.
- b. **Intellectual Property** includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).
- c. **Work** means our performance of services for you, and the production or supply of any Goods by us as part of or related to such services, as described on the front page of these Terms of Trade.

24.2 References to us include our employees, contractors and agents.

24.3 Words referring to the singular include the plural and vice versa.

24.4 Any reference to a party includes:

- a. that party's executors, administrators, or permitted assigns; or
- b. if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.

24.5 References to money will be New Zealand currency, unless specified otherwise.

24.6 Expressions referring to writing will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by fax or email).

24.7 References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.

24.8 Where there is any conflict between these Terms of Trade and any other correspondence between us and you, whether written or verbal, the provisions of these Terms of Trade shall prevail unless we expressly agree otherwise.