



220 Eighth Avenue, Austral NSW 2179  
 Phone: (02) 9606 8410 • Fax: (02) 9606 9752  
 Vince: 0407 942 358 • Rosa: 0407 942 252  
 Email: sales@australseedling.com.au  
 Web: www.australseedlings.com.au  
 ABN 37 129 077 050

# ORDER FORM

**NATURE OF ORGANISATION:**

Sole Trader  Partnership  Proprietary Company  
 Individual  Other \_\_\_\_\_

DATE: \_\_\_\_\_

Name: \_\_\_\_\_

Delivery Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_ Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_ ABN: \_\_\_\_\_

VARIETY	QTY	PICK UP DATE	TOTAL

<p><i>The plants are germinated from the best of selected seeds from certified seed merchants and are cultivated scientifically. All care is taken in the preparation and presentation. We cannot take responsibility for them after they leave our hands.</i></p> <p><b>PLEASE RETURN TO THE ABOVE ADDRESS.</b></p>	<p>TOTAL</p>	
	<p>GST</p>	
	<p>TOTAL AMOUNT INCL. GST</p>	

I have read and understand the General Terms and Conditions of Trade (overleaf) of Vince & Rosa Vella T/A Austral Seedlings which form part of, and are intended to be read in conjunction with this Order Form and agree to abide by these conditions.

Signed: \_\_\_\_\_ Signed: \_\_\_\_\_  
*Austral Seedlings* *Customer*
  
 Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_

## TERMS AND CONDITIONS

1. **Definitions**
- 1.1 "Austral Seedlings" shall mean Vince & Rosa Vella T/A Austral Seedlings, its successors and assigns or any person acting on behalf of and with the authority of Vince & Rosa Vella T/A Austral Seedlings.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by Austral Seedlings to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Austral Seedlings to the Buyer
- 1.5 "Services" shall mean all services supplied by Austral Seedlings to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between Austral Seedlings and the Buyer subject to clause 3 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by Austral Seedlings from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by Austral Seedlings shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be amended with the written consent of Austral Seedlings.
- 2.4 The Buyer undertakes to give Austral Seedlings at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.
3. **Price And Payment**
- 3.1 At Austral Seedlings' sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by Austral Seedlings to the Buyer in respect of Goods supplied; or
  - (b) Austral Seedlings' quoted Price (subject to clause 3.2) which shall be binding upon Austral Seedlings provided that the Buyer shall accept Austral Seedlings' quotation in writing within thirty (30) days.
- 3.2 Austral Seedlings reserves the right to change the Price in the event of a variation to Austral Seedlings' quotation.
- 3.3 At Austral Seedlings' sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and Austral Seedlings.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
4. **Delivery Of Goods**
- 4.1 At Austral Seedlings' sole discretion delivery of the Goods shall take place when;
  - (a) the Buyer takes possession of the Goods at Austral Seedlings' address; or
  - (b) the Buyer takes possession of the Goods at the Buyer's address (in the event that the Goods are delivered by Austral Seedlings or Austral Seedlings' nominated carrier); or
  - (c) the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.
- 4.2 At Austral Seedlings' sole discretion the costs of delivery are;
  - (a) included in the Price, or
  - (b) in addition to the Price, or
  - (c) for the Buyer's account.
- 4.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then Austral Seedlings shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Austral Seedlings may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5 The failure of Austral Seedlings to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 Austral Seedlings shall not be liable for any loss or damage whatever due to failure by Austral Seedlings to deliver the Goods (or any of them) promptly or at all.
5. **Risk**
- 5.1 If Austral Seedlings retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, Austral Seedlings is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Austral Seedlings is sufficient evidence of Austral Seedlings' rights to receive the insurance proceeds without the need for any person dealing with Austral Seedlings to make further enquiries.
6. **Title**
- 6.1 It is the intention of Austral Seedlings and agreed by the Buyer that ownership of the Goods shall not pass until:
  - (a) the Buyer has paid all amounts owing for the particular Goods, and
  - (b) the Buyer has met all other obligations due by the Buyer to Austral Seedlings in respect of all contracts between Austral Seedlings and the Buyer.
- 6.2 Receipt by Austral Seedlings of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Austral Seedlings' ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until Austral Seedlings shall have received payment and all other obligations of the Buyer are met; and
  - (b) until such time as ownership of the Goods shall pass from Austral Seedlings to the Buyer Austral Seedlings may give notice in writing to the Buyer to return the Goods or any of them to Austral Seedlings. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and
  - (c) Austral Seedlings shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Buyer fails to return the Goods to Austral Seedlings then Austral Seedlings or Austral Seedlings' agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods; and
  - (e) the Buyer is only a bailee of the Goods and until such time as Austral Seedlings has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for Austral Seedlings; and
  - (f) the Buyer shall not deal with the money of Austral Seedlings in any way which may be adverse to Austral Seedlings; and
  - (g) the Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Austral Seedlings; and
  - (h) Austral Seedlings can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and
  - (i) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that Austral Seedlings will be the owner of the end products.
7. **Buyer's Disclaimer**
- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by Austral Seedlings and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.
8. **Defects**
- 8.1 The Buyer shall inspect the Goods on delivery and shall immediately notify Austral Seedlings of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford Austral Seedlings an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Austral Seedlings has agreed in writing that the Buyer is entitled to reject, Austral Seedlings' liability is limited to replacing the Goods.
- 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.
9. **Warranty**
- 9.1 All seedlings supplied or sold by Austral Seedlings are believed to come from commercial stock and to be consistent and in accordance with the description of the same but no statement, representation, promise, undertaking, warranty or indemnity is given or made to the Buyer (except as is implied by statute, statutory rule, or regulation) that any seedlings will perform to or in accordance with the description provided and, further, Austral Seedlings is not liable or responsible for the performance of the same.
- 9.2 Neither the state or condition of any seedling supplied or sold by Austral Seedlings, nor the failure of any seedlings to survive or grow adequately, sufficiently, properly or all is the subject of any statement, representation, promise, undertaking, warranty or indemnity by Austral Seedlings (except as is implied by the statute, statutory rule or regulation).
- 9.3 The Buyer acknowledges that the growth of the seedlings are subject to all or any number of factors including but not limited to unsuitable soil, or location, weather, temperature, humidity or other climate conditions, handling, storage, cultivation, attack by fungus, disease or insects or other pests and that no warranty or indemnity is given by Austral Seedlings (except as is implied by the statute, statutory rule or regulation).
- 9.4 The Buyer acknowledges that Austral Seedlings is acting as the agent of the Buyer in respect of any seed the Buyer directs or requests Austral Seedlings to purchase. No statement, representation, promise, undertaking, warranty or indemnity is given or made to the Buyer that such seed will grow to perform in any particular manner and Austral Seedlings is not liable or responsible for the performance of such seed nor any damage and/or loss, howsoever caused, by the Buyer in the event that such seed is defective in any way.
10. **The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
11. **Default & Consequences Of Default**
- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 11.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify Austral Seedlings from and against all costs and disbursements incurred by Austral Seedlings in pursuing the debt including legal costs on a solicitor and own client basis and Austral Seedlings' collection agency costs.
- 11.3 Without prejudice to any other remedies Austral Seedlings may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), Austral Seedlings may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. Austral Seedlings will not be liable to the Buyer for any loss or damage the Buyer suffers because Austral Seedlings exercised its rights under this clause.
- 11.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.5 Without prejudice to Austral Seedlings' other remedies at law Austral Seedlings shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed and all amounts owing to Austral Seedlings shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to Austral Seedlings becomes overdue, or in Austral Seedlings' opinion the Buyer will be unable to meet its payments as they fall due; or
  - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
12. **Security And Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which Austral Seedlings may have howsoever:
  - (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Austral Seedlings or Austral Seedlings' nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that Austral Seedlings (or Austral Seedlings' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - (b) should Austral Seedlings elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify Austral Seedlings from and against all Austral Seedlings' costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Austral Seedlings or Austral Seedlings' nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
13. **Cancellation**
- 13.1 Austral Seedlings may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice Austral Seedlings shall repay to the Buyer any sums paid in respect of the Price. Austral Seedlings shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by Austral Seedlings (including, but not limited to, any loss of profits) up to the time of cancellation.
14. **Privacy Act 1988**
- 14.1 The Buyer and/or the Guarantor/s agree for Austral Seedlings to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by Austral Seedlings.
- 14.2 The Buyer and/or the Guarantor/s agree that Austral Seedlings may exchange information about the Buyer and the Guarantor/s with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by Buyer; and/or
  - (b) to notify other credit providers of a default by the Buyer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Buyer and/or Guarantor/s.
- 14.3 The Buyer consents to Austral Seedlings being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Buyer agrees that personal credit information provided may be used and retained by Austral Seedlings for the following purposes and for other purposes as shall be agreed between the Buyer and Austral Seedlings or required by law from time to time:
  - (a) provision of Goods; and/or
  - (b) marketing of Goods by Austral Seedlings, its agents or distributors in relation to the Goods; and/or
  - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and/or
  - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.
- 14.5 Austral Seedlings may give information about the Buyer to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Buyer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
15. **General**
- 15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 15.3 Austral Seedlings shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by Austral Seedlings of these terms and conditions.
- 15.4 In the event of any breach of this contract by Austral Seedlings the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of Austral Seedlings exceed the Price of the Goods.
- 15.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by Austral Seedlings.
- 15.6 Austral Seedlings may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 15.7 Austral Seedlings reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Austral Seedlings notifies the Buyer of such change.
- 15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 15.9 The failure by Austral Seedlings to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Austral Seedlings' right to subsequently enforce that provision.