KIWI POLLEN LIMITED

TERMS OF TRADE

1. Interpretation

1.1 These Terms of Trade are entered into by the Buyer and are intended to bind and be for the benefit of Kiwi Pollen and Kiwi Pollen's successors and assigns.

1.2 In these conditions:

"Buyer"	means the person or company buying the Products from Kiwi Pollen.
"Checkout"	means the process used by the Buyer on the Kiwi Pollen website to purchase Products and accept the Terms of Trade.
"Contract"	means the contract between Kiwi Pollen and the Buyer for the purchase of the Products.
"Contract Price"	means the price of the Products as agreed between Kiwi Pollen and the Buyer, subject to any variation in accordance with clauses 2 and 3.
"Delivery Date"	means the date the Products are delivered or are to be provided under the Contract.
"Kiwi Pollen"	means Kiwi Pollen Limited, with its registered office at 427 Te Matai Road, Te Puke, 3188, New Zealand.
"Offline Order"	means any Order for Products placed by the Buyer, that is not an Online Order.
"Order"	means an order for Products placed by the Buyer, whether online through the Kiwi Pollen website, by email, phone, in person or by accepting a quotation.
"Online Order"	means an order placed by the Buyer through the Kiwi Pollen website using our Checkout.
"Products"	means all products, merchandise and services supplied or to be supplied by or through Kiwi Pollen to the Buyer from time to time.
"Website"	means the Kiwi Pollen website through which Products are offered for sale.

2. Order

2.1. A contract will come into existence and will be governed by these Terms of Trade once the Buyer has accepted a quotation from Kiwi Pollen. The Buyer cannot cancel an order for a Product after the quotation has been accepted. By placing an Order, the Buyer accepts these Terms of Trade.

2.2. A Contract is formed when:

a. the Buyer submits an Online Order through the Kiwi Pollen website and receives an order confirmation email; or

b. the Buyer accepts a written quotation from Kiwi Pollen.

2.3. Any additional terms Kiwi Pollen includes in a quotation will form part of the Contract between the parties for the relevant Product.

2.4. Kiwi Pollen will use reasonable endeavours to complete all orders by the Buyer and quoted by Kiwi Pollen within a reasonable time.

2.5. The Buyer is responsible for ensuring that all information provided when placing an Order (including delivery address and contact details) is complete and accurate.

3. Price

3.1. The price contained in the Contract is based upon rates and costs as at the date of the Contract or where the Contract arises from a quotation or estimated price including materials, labour and other costs.

3.2. The price may be increased by the amount of any increase in the cost of the Product or any other factors that may arise between the above-mentioned date and the Delivery Date.

3.3. Prices displayed on the Kiwi Pollen website are in New Zealand dollars.

3.4. If a pricing error occurs on the Kiwi Pollen website or in any other ordering channel, Kiwi Pollen may cancel the Order and refund any amount paid.

4. Taxes and Duties

4.1. Unless expressly included in any quotation given by Kiwi Pollen or at Checkout, freight costs, insurance charges, customs and import duties, GST (or other taxes payable on Products supplied) are not included in the price and are the responsibility of the Buyer.

5. Payment

5.1. Online Orders must be paid in full at Checkout using the payment methods available on the website.

5.2. Offline Orders must be paid in accordance with the invoice terms stated on the relevant invoice or within 30 days of the date Kiwi Pollen invoices the Buyer for the Products, whichever is the earlier.

5.3. The Buyer is not entitled to withhold payment, set off counterclaim or to make any deductions from the Contract Price without the prior written consent of Kiwi Pollen.

6. Interest for Late Payment

6.1. Interest at 2% per month, calculated on a daily basis, is payable on any monies outstanding under the Contract from the date payment was due, until the date payment is received by Kiwi Pollen whether before or after judgement but without prejudice to Kiwi Pollen's other rights in respect of non-payment or late payment.

7. Delivery

7.1. For Online Orders, delivery will be made to the address provided at Checkout.

a. If "Delivery " option is selected at checkout, delivery will be made to the address provided at Checkout.

b. If "Collection" option is selected at checkout, your order will not be available for immediate pickup. Once your order has been processed and is ready, a member of our team will contact you via the email address or phone number provided during checkout to arrange a specific collection date and time.

7.2. Kiwi Pollen will provide estimated delivery timeframes and tracking where available.

7.3. Delivery or collection will occur only once payment terms (online or invoice) have been met.

8. Inspection

8.1. The Buyer must notify Kiwi Pollen of any defective or damaged Products within 7 days of the Delivery Date and return the Products to Kiwi Pollen within 14 days if it wishes to make a claim. Products must be returned freight paid and the Buyer can claim for any reasonable freight charges. Failure by the Buyer to comply with this clause will be deemed a waiver by the Buyer of all claims in respect of such Products.

8.2. Kiwi Pollen's total liability for or arising from defective or damaged Products is limited at Kiwi Pollen's option to either replacing or repairing the Products; or refunding the Contract Price.

8.3. Kiwi Pollen will not be liable in any circumstances whether in contract, tort (including negligence) or otherwise to compensate the Buyer for any loss, injury or damage arising directly or indirectly from any act, omission, error, default or delay of Kiwi Pollen or its employees or agents.

8.4. Kiwi Pollen will not be liable if the Buyer has altered or modified the Products or has subjected them to any unauthorised, unusual or non-recommended use, servicing or handling.

9. Risk

9.1. Risk of any loss, damage or deterioration of or to the Products is to be borne by the Buyer from the Delivery Date.

10. Retention of Title

10.1. The legal and equitable ownership of the Products supplied will remain with Kiwi Pollen until payment has been made in full of the Contract Price for the Products, due and owing to Kiwi Pollen.

10.2. If the Products have been mixed with or incorporated into another Product or Products so that it is impossible or impracticable to remove the Products supplied, then Kiwi Pollen will be co-owner of the mixed products or new products in proportion to the contribution calculated by reference to the price of Kiwi Pollen's Products to the mixed products or new products.

10.3. If default is made in the payment of the Contract Price of the Products, or of the other money referred to, Kiwi Pollen may repossess the Products and dispose of them as it sees fit, may stop any further deliveries, and/or may cancel any contract with the Buyer. For the purposes of repossession, Kiwi Pollen and its agents are irrevocably

authorised to enter any premises of the Buyer or any third party and the Buyer agrees to indemnify Kiwi Pollen and its agent, for any liability arising from any act or trespass committed by such entry. If before or after default the Products are incorporated in other products, but in either case remain identifiable and can be removed (with or without damage to the products or other things) Kiwi Pollen's right of removal shall not be extinguished by their being so incorporated or attached.

10.4. The Buyer will store the Products until payment, in such a way as clearly to indicate that they are Kiwi Pollen's products.

10.5. Until title in the Products passes to the Buyer, the Buyer must:

a. Hold the products as Bailee;
b. Store the Products in a manner which will protect them from damage or deterioration; and
c. Insure the Products for their full insurable value.

11. Delay

11.1. If the supply or delivery of the Products is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, Kiwi Pollen may, without prejudice to its other right and remedies, require payment by the Buyer of such portion of the Contract as represents the extent to which Kiwi Pollen has performed the Contract up to the date such payment is required together with any expenses or additional costs incurred by Kiwi Pollen as a result of such delay. In the event of such delay continuing beyond a reasonable time, Kiwi Pollen may, without prejudice to its other remedies, terminate the contract.

12. Warranty & Liability

12.1. Except as expressly set out in this document, all representations, conditions and warranties (express or implied) applying between Kiwi Pollen and the Buyer, whether statutory or otherwise are excluded as far as the law allows.

12.2. Products supplied are for use in pollination of kiwifruit only. Beyond delivery, Kiwi Pollen has no control over storage, handling and application of the Products and consequently does not accept liability for any failure or loss arising from its use.

12.3. Except as provided in any express warranty given by Kiwi Pollen, no warranty or condition shall be implied against Kiwi Pollen by any statute, at common law or otherwise and no representation, condition, warranty or variation of these terms will be binding on Kiwi Pollen unless it is in writing and signed by an authorised person on behalf of Kiwi Pollen.

12.4. The entire liability of Kiwi Pollen to the Buyer, or any other person, whether statutory, contractual, tortious or otherwise, in relation to any claim or series of related claims is limited to $250,000.00 (including GST).

12.5. Clause 12.4 sets out the Buyer's sole rights to compensation/remedies from Kiwi Pollen for any matter involving these Terms of Trade, the Contract or any other matter. Kiwi Pollen will not be liable in any way (including negligence, tort and equity) to the Buyer or to any other person in connection with this or any other contract or the supply or failure of any Product or the purported exercise of Kiwi Pollen's rights under these Terms for any:

a. Loss whatsoever including loss of income, profits, savings or goodwill or any indirect or consequential loss or special or exemplary damages;
b. In relation to any claim or series of related claims any amount exceeding $250,000.00 (including GST); or
c. Amount not claimed within 90 days of the Buyer becoming aware of the circumstances giving rise to this claim.

13. Default

13.1. If the Buyer (a) defaults in the due payment of any monies payable to Kiwi Pollen under the contract, or (b) commits any act of bankruptcy or insolvency, or (c) enters into any composition or arrangement with its creditors or (d) (in the case of a company) does any act which would render it liable to be wound up or have a receiver appointed over its property or (e) Kiwi Pollen reasonably believes that the Buyer is unlikely to be able to immediately pay any sums due or owing, or supply information to Kiwi Pollen, Kiwi Pollen, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Products delivered and work performed up to the date of such suspension or termination and any other monies payable hereunder will immediately become due and payable.

13.2. Kiwi Pollen shall be under no obligation to complete any Contract or to deal with the Buyer until they are entirely satisfied all defaults have been remedied and Kiwi Pollen is confident the Buyer will be able to perform their obligations under the Contract.

13.3. The Buyer acknowledges and agrees to pay all Kiwi Pollens' costs (including legal costs on a solicitor/ client basis) incurred by Kiwi Pollen in connection with any default by the Buyer or enforcement action taken by Kiwi Pollen.

13.4. In consideration of Kiwi Pollen agreeing to supply the Products, the Buyer charges all its right, title and interest (whether joint or several) in any land owned by the Buyer, either now or in the future, to secure the performance by the Buyer of its obligations under the Contract.

13.5. The Buyer indemnifies Kiwi Pollen from and against all Kiwi Pollens costs and disbursements including legal costs, incurred by Kiwi Pollen in enforcing its rights under the Contract.

14. Contract

14.1. The items contained in Kiwi Pollen's quotation, any supply contract made between the parties together with these Terms of Trade are the conditions of the Contract.

14.2. The Buyer acknowledges and agrees that in the case of any conflict between an order submitted by the Buyer and Kiwi Pollen's quotation, Contract and these Terms of Trade, Kiwi Pollen's quotation, supply contract or order and these Terms of Trade prevail.

15. No Assignment

15.1. The Buyer may not assign all or any of the Buyer's rights or obligations under the Contract without the prior written consent of Kiwi Pollen.

16. Law and Jurisdiction

16.1. These Terms of Trade are governed by New Zealand law and the courts of New Zealand shall have exclusive jurisdiction to settle any dispute which may arise from these Terms of Trade.

16.2. The Contract and these Terms of Trade are the entire Agreement between the Buyer and Kiwi Pollen, and supersede all representations, agreements and other communication.

17. Consumer Guarantees Act 1993

17.1. The Buyer acknowledges that the purchase of the Products is for the purposes of a Business (unless otherwise stated), and the provisions of the Consumer Guarantees Act 1993 will not apply.

18. Privacy

18.1. Kiwi Pollen will only use your personal information as set out in our privacy policy and in accordance with the Privacy Act 2020 (New Zealand).

19. Force Majeure

19.1. Kiwi Pollen shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its reasonable control, or as a result of an act of God, war, terrorism, strike, lockout, fire, flood, storm, earthquake or any local or central government requirement.

20. Waiver

20.1. All the rights, exemptions and remedies of Kiwi Pollen remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.

20.2. Kiwi Pollen is not deemed to have waived any condition unless such waiver is in writing.