Ambius terms and conditions

1. **Rentokil Initial Pty Ltd** (ABN 98 000 034 597) trading as Ambius (**Ambius**) agrees to sell, and the Client agrees to buy, Products and Services, in accordance with these terms and conditions (hereafter referred to as the **Agreement**). For the purposes of this Agreement:
   (a) **Products** may include decorative containers and topping, living plants, and sub-irrigation equipment and other material necessary for plant scaping.
   (b) **Services** means short term hire and maintenance of Ambius-owned decorative containers and topping, living plants, and sub-irrigation equipment (**Displays**), and may include equipment stored at Client sites.
2. **Acceptance:** The Client's acceptance of these terms and conditions may be confirmed either by signing this document by its representative, confirming its acceptance by email or allowing Ambius to supply the Products and/or perform the Services.
3. **Sales:** The Client purchases the Products in accordance with the terms and conditions of this Agreement for the agreed price and in the condition as inspected by the Client. Risk in the Products passes to the Client upon delivery and title to the Products passes to the Client upon payment in full to Ambius. Ambius sells the Products to the Client free of any claims by third parties.
4. **Fees:** Fees for the Products are payable in accordance with the tax invoice issued by Ambius, but no later than seven (7) days from the date of the invoice unless otherwise agreed. Fees payable under this Agreement exclude any amount in respect of GST which shall be payable in addition to the Fees upon Ambius providing a tax invoice.
5. **Ownership**: The Client acknowledges that Displays and ancillary equipment remain the property of Ambius at all times, and the Displays will be held by the Client as bailee for Ambius. Risk of damage or loss to the Displays passes to the Client upon delivery, and until Ambius retakes possession of the Displays. The Client is responsible for all reasonable costs of, and incidental to, the installation and removal of the Displays. Ambius may replace any Display at any time provided the replacement is of equivalent or better standard.
6. **Responsibility of Ambius:** Ambius agrees it will:
   a. supply, install and/or service the Displays in accordance with this Agreement;
   b. require its personnel to comply with any reasonable security or safety direction given to them while present at the Client's site; and
   c. provide Services between business hours of 7am and 5pm Monday to Friday (unless otherwise agreed) sufficient to ensure optimum plant health. Service outside these hours may incur additional charges.
7. **Responsibility of the Client:** The Client agrees to:
   a. promptly notify Ambius:
      i. if access is unavailable for Ambius staff (other than on weekends and public holidays) or if the Displays are damaged or deteriorate between Service calls;
      ii. of any hazards at the Client's site that may present a risk to any personnel. The Client agrees to eliminate or minimise these risks;
      iii. if the Client wishes to relocate the Displays within the Client's site. Any relocation of Displays may incur additional costs;
      iv. at least three (3) weeks in advance, if the site location of the Displays will be inaccessible to Ambius for more than one (1) week or the Displays are to be relocated from their location at the site; and
      v. if the Client requires Ambius to move or relocate the Displays for a temporary period. The Client acknowledges there will be a charge for removal, storage and re-installation above and beyond the regular fee.
   b. inform its own staff not to pour any liquids of any type into, or otherwise interfere with, relocate or modify any Display;
   c. if requested by Ambius, arrange insurance against theft, destruction or damage to any Displays.
   d. provide Ambius' staff with sufficient access to hot and cold water for use in the maintenance of the Displays;
   e. pay the cost of hiring and use of any specialist equipment required by Ambius to carry out Services or relocate or remove the Displays;
   f. ensure the temperature range to which the Displays are subject remains in the range of 15 to 25 degrees Celsius inclusive. The Client acknowledges this is the most appropriate temperature range to ensure optimum performance from the Displays and the Client agrees to use its best endeavours to maintain temperatures at the site within the limits of that range;
   g. not sell, lease or part with possession or otherwise encumber any property of Ambius; and
   h. upon termination of this Agreement, provide Ambius with access to the site to remove all property belonging to Ambius as soon as practicable. The Client acknowledges that additional fees will be payable to Ambius if multiple visits are required to recover its property.
8. **Delivery Delays:** If the Client (for any reason) is unable to take delivery of the Displays under a Service Agreement for rental and maintenance within one (1) month of the date of this Agreement, or such other date as may be agreed upon, then the Client must reimburse Ambius any extra costs including storage and transport incurred by Ambius as a result of that delay.
9. **Cancellations:** Ambius may suspend the Services or cancel this Agreement on immediate notice to the Client. To the extent permitted by law, the Client may only cancel this Agreement within 24 hours of acceptance by the Client in accordance with clause 2.
10. **Subcontracting**: Ambius may engage subcontractors to perform the Services for the Client and will be responsible for the performance of the delivery by that subcontractor of Ambius' obligations under this Agreement.
11. **Force Majeure**: a party shall not be responsible for failure to meet any obligation (save for failure to make payment) if the failure results directly or indirectly from a cause beyond that party's control.
12. **Anti Bribery & Tax Evasion**: The parties agree that:
    a. they will not (nor allow anyone acting on their behalf) to offer, give, request or accept any undue financial or other advantage of any kind in any way connected with entry into this Agreement;

b. they will each comply with all applicable laws related to tax evasion, bribery and corruption and policies in connection with this Agreement. Any failure to comply with this clause entitles the other party to terminate this Agreement upon notice to the other party,
c. they have and maintain, throughout the term of this Agreement, policies and procedures designed to ensure compliance with anti-corruption laws and will implement and enforce those policies and procedures where appropriate;
d. they promptly report to the other party any request or demand for any bribe or other unlawful payment received by the other party in connection with the performance of the Agreement;
e. they immediately notify the other party if a government official becomes its director or officer or acquires a controlling interest in that party; and
f. that they have the right to immediately suspend or terminate this Agreement upon written notice to the other party in the event the other party has engaged in conduct that violates anti-corruption and/or tax evasion laws or violates this clause of the Agreement.

13. **Termination:** Ambius may suspend or terminate the Services immediate notice to the Client, and either party may terminate this Agreement on immediate notice to the other party if:
    a. the other party is in breach of a material obligation and does not remedy that breach within two (2) business days of notice from the party;
    b. the other party breaches any other provisions and fails to remedy (if capable of remedy) within ten (10) business days of notice from the party; or
    c. the other party becomes insolvent or deemed insolvent, bankrupt, ceases or threatens to cease to carry on business, a receiver, manager, administrator, liquidator or similar officer is appointed to any of its assets or steps are commenced seeking such an appointment or if any event having a similar effect occurs in relation to the other party.

For the purposes of this clause 13, it is agreed that any non-payment, failure to allow access to the Displays and removal of Displays without approval from Ambius are material breaches of this Agreement.

14. **Removal of Equipment:** On termination of this Agreement, however that arises, Ambius may remove all of its property in the Client's possession or control, and for that purpose may enter the Client's premises and remove the property. Ambius shall use all reasonable care in removing its property but shall not be responsible for restoring that part of the premises to the original state. If Ambius is unable to remove its property, the Client shall be liable for the replacement value of the property that has not been recovered.
15. **Debt Collection:** The Client indemnifies Ambius for all expenses incurred in relation to the recovery of debts owing by the Client, and this obligation shall survive termination of this Agreement.
16. **Privacy and Data Protection:** The Client authorises Ambius, its personnel or any related entities of Ambius, subject to complying with the *Privacy Act 1988* (Cth) and other privacy legislation as applicable, to use and disclose the personal information of the Client for any purpose connected with this Agreement or otherwise in accordance with the Rentokil Initial Privacy Policy which can be accessed at: https://www.rentokil-initial.com/site-services/cookie-and-privacy-policy/privacy-policy.aspx (**Privacy Policy**) .Ambius shall process personal data concerning employees and representatives of the Client as a data controller and in accordance with the Privacy Policy. From time to time, Ambius may send marketing communications to employees and representatives of the Client. Those individuals may opt out from receiving marketing communications at any time by contacting Ambius or following a link in each communication they receive.
17. **Entire Agreement:** This Agreement supersedes and replaces all previous Agreements between the parties in relation to the Services and contains the entire Agreement between them as to its subject matter. To the extent permitted by law, Ambius expressly excludes all warranties, guarantees, representations and conditions except as may be made by Ambius to the Client in writing. For the avoidance of doubt, Ambius does not seek to exclude liability for any misrepresentations made to the Client which induced the Client to enter into this Agreement.
18. **Indemnity**: To the extent permitted by law, the Client will indemnify Ambius against all actions, claims, proceedings or costs (including legal costs on a full indemnity basis) which Ambius may incur as a result of:
    a. any person alleging loss or injury due to the Displays not being used by the Client or its staff or invitees in the manner recommended by Ambius; and/or
    b. any loss or damage to the Displays;

    except to the extent any loss or damage is caused by Ambius or its personnel.
19. **Limitation of Liability:** To the extent permitted by law:
    a. If the Client is a consumer under the Australian Consumer Law in the *Competition and Consumer Act 2010* (Cth) (**ACL**), the Client has certain statutory rights. Nothing in this Agreement excludes, restricts or modifies those rights, or any other statutory rights that the Client has.
    b. If the Client is a consumer under the ACL and the goods and/or services supplied under this Agreement are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then Ambius' liability for failure to comply with a consumer guarantee under the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) is limited to one or more of the following, at Ambius' election:
        i. in relation to the supply of services: the resupply of the services or the payment of the cost of having the services supplied again; and/or
        ii. in relation to the supply of goods: the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.
    c. Subject to clause 19a, above, and to the extent permitted by law:

i. neither party nor any of their affiliates, subcontractors, agents and/or employees will be liable for any loss of profits or revenue, loss of business, wasted expenditure or any form of indirect or consequential loss arising out of or in connection with this Agreement;

ii. Ambius will only be liable for loss or damage to the Client's property, injury or death of persons to the extent such loss or damage is directly caused by Ambius' negligence, misconduct or breach of contract (including failure to provide the Services in accordance with this Agreement); and

iii. Ambius will not be liable for loss or damage caused by the Client, including because the Client has disturbed treated areas, and/or because the Client has failed to implement Ambius' recommendations; and

iv. the total liability of Ambius, its affiliates, subcontractors, agents and employees arising out of the performance or non-performance of this Agreement or any of the obligations in this Agreement (including, without limitation, obligations in connection with the supply of the Services), whether based on contract, tort (including negligence), or any other common law or statutory right, shall not exceed in the aggregate a sum equal to 100% of the total fees paid to Ambius by the Client under this Agreement in the twelve months period ending on the date any claim for liability is notified to Ambius.

d. Any goods or services supplied under this Agreement are provided for the benefit of the Client only. Ambius accepts no liability whatsoever, whether in contract, tort or otherwise, including in negligence, to any third party as a result of any goods or services it supplies to the Client.

e. Nothing in this Agreement, excludes or limits the liability of either party for death or personal injury caused by that party's negligence, fraud or fraudulent misrepresentation of any other matter to the extent that such exclusion or limitation would be unlawful.

The parties agree that the above and all its limitations are fair and reasonable and apply to all claims whether in contract, tort (including negligence), misrepresentation or otherwise).

20. **Credit Reporting**: Where the Client is provided with credit, the Client authorises Ambius to do any of the following to assess the Client's application for credit under this Agreement and, if the application is successful, to manage the credit account until the credit account is repaid in full and closed:

a. obtain credit reports in respect of the Client and its related entities from credit-reporting agencies;

b. seek and/or disclose information about the Client and its related entities (including any information about their credit worthiness, credit history, standing or capacity) which credit providers are permitted by the *Privacy Act 1988* to supply, obtain or receive;

c. disclose information about the application for credit under this Agreement and, if the application is successful, about the credit account and any credit provided to a credit-reporting agency in order to obtain information or credit reports;

d. disclose information including identity particulars, the fact that the Client has applied for credit and details of payments which are overdue more than sixty (60) days to credit-reporting agencies and other credit providers; and

e. disclose information about the Client and its related entities to any person considering acting as a guarantor of the Client.

21. **Modern Slavery and Human Trafficking:** Each party shall: (a) comply with all anti-slavery and human trafficking laws, statutes, regulations and codes to the extent applicable to the relevant party (collectively, the "Anti-Slavery Laws"); (b) represent that it does not engage in any activity, practice or conduct that would constitute an offence under any applicable Anti-Slavery Laws; (c) have and maintain, throughout the term of this Agreement, policies and procedures, including due diligence procedures, designed to ensure compliance with Anti-Slavery Laws and will implement and enforce those policies and procedures where appropriate, including those provisions within its contracts with subcontractors, suppliers or other third parties; (d) promptly report to the other party any potential or actual breach of this clause from its activities or through its relationships with subcontractors, suppliers or other third parties; and (e) have the right to terminate the Agreement with immediate effect by giving written notice to the other party if the other party commits a breach of the Anti-Slavery Laws or violates this clause of the Agreement.

22. **Sanctions:** Each party shall: (a) comply (and shall continue to comply during the term of this Agreement) with all applicable laws or regulations relating to economic sanctions or trade and export controls and other restrictive measures imposed, administered or enforced by a sanctions authority (collectively "Sanctions") including, but not limited to: the UK, EU, US or the United Nations, including His Majesty's Treasury and the UK's Office of Financial Sanctions Implementation or Department for Business and Trade, the US Office of Foreign Assets Control and the UN Security Council (a "Sanctions Authority"); (b) represent that it is not subject to any actual, alleged or threatened Sanctions proceedings, including litigation or other proceedings, or investigation, inquiry or enforcement action (including the imposition of fines or penalties) by any Sanctions Authority; (c) represent that it is not and has not been included on any list issued or maintained by a Sanctions Authority identifying persons subject to Sanctions (a "Sanctions List"); (d) represent that it is not owned or controlled by a person on a Sanctions List; and is not resident, domiciled or located in, or incorporated or organised under the laws of a country or territory subject to Sanctions; (e) have and maintain, throughout the term of this Agreement, adequate policies and procedures designed to ensure compliance with Sanctions and will implement and enforce such policies and procedures; (f) promptly report to the other party in writing of any potential, suspected or actual breach of this clause; and (g) have the right to immediately suspend or terminate this Agreement with immediate effect by giving written notice to the other party if the other party becomes a subject of Sanctions, is involved in Sanctions proceedings or otherwise contravenes Sanctions or violates this clause of the Agreement.

23. **Surcharges:** Ambius may apply a surcharge (without profit or administrative markup) if Ambius incurs substantial cost increases due to unforeseen situations such as: fuel/energy volatility, major supply chain disruptions, or changes to government taxes/levies and tariffs. Ambius will provide 30 days' written notice detailing the amount, reason, and effective date of the surcharge. Ambius will monitor the situation and reassess within 6 months of the increase, whether a reduction or removal of the surcharge is warranted. Notwithstanding any other provision in this Agreement, if the Client disagrees with the surcharge, the Client may terminate the Agreement with 30 days' written notice.

24. **General:**

a. This Agreement may only be amended in writing signed by both parties.

b. A reference to 'writing' or 'written' includes electronic mail.

c. If any provision of this Agreement is illegal, invalid, or unenforceable, it may be severed without affecting the enforceability of the other provisions.

d. Neither the Client nor Ambius may assign its rights under this Agreement without the prior written approval of the other party whereby the approval must not be withheld unreasonably.

e. Each indemnity in this Agreement is a continuing obligation separate and independent from the other obligations of the party giving the indemnity and survives termination or expiry of this Agreement.

f. This Agreement is governed by the laws of the State or Territory where the Services are being provided to the Client and the parties submit to the jurisdiction of the courts of that State or Territory.