

## WEBSITE TERMS AND CONDITIONS OF USE

### 1. About the Website

- 1.1. Welcome to [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) ('Website'). The Website outline the services provided by Adam Fox Gardening and provides related information relevant to the landscaping and horticulture industries. .
- 1.2. The Website is operated by Adam Fox Gardening (ABN 45 780 533 540). Access to and use of the Website, or any of its associated Products or Services, is provided by Adam Fox Gardening. Please read these terms and conditions ('Terms') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
- 1.3. Adam Fox Gardening reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Adam Fox Gardening updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

### 2. Acceptance of the Terms

You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Adam Fox Gardening in the user interface.

### 3. Copyright and Intellectual Property

- 3.1. The Website, the content and all of the related products of Adam Fox Gardening are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the content and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website, code, scripts, design elements and interactive features) or the content are owned or controlled for these purposes, and are reserved by Adam Fox Gardening or its contributors.
- 3.2. All trademarks, service marks and trade names are owned, registered and/or licensed by Adam Fox Gardening, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a Member to:
  - (a) use the Website pursuant to the Terms;
  - (b) copy and store the Website and the material contained in the Website in your device's cache memory; and
  - (c) print pages from the Website for your own personal and non-commercial use.

Adam Fox Gardening does not grant you any other rights whatsoever in relation to the Website or the content. All other rights are expressly reserved by Adam Fox Gardening.

- 3.3. Adam Fox Gardening retains all rights, title and interest in and to the Website and all related content. Nothing you do on or in relation to the Website will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
- (c) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),

to you.

- 3.4.** You may not, without the prior written permission of Adam Fox Gardening and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the content or third party content for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

#### **4. Privacy**

Adam Fox Gardening takes your privacy seriously and any information provided through your use of the Website and/or content are subject to Adam Fox Gardening's Privacy Policy, which is available on the Website.

#### **5. General Disclaimer**

- 5.1.** Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 5.2.** Subject to this clause 5, and to the extent permitted by law:
- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
  - (b) Adam Fox Gardening will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the content or these Terms (including as a result of not being able to use the content or the late supply of the content), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 5.3.** Use of the Website and the content is at your own risk. Everything on the Website and the content is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Adam Fox Gardening make any express or implied representation or warranty about the content or any products or content (including the products or content of Adam Fox Gardening) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;

- (b) the accuracy, suitability or currency of any information on the Website, the content, or any of its content related products (including third party material and advertisements on the Website);
- (c) costs incurred as a result of you using the Website, the content or any of the products of Adam Fox Gardening; and
- (d) the content or operation in respect to links which are provided for your convenience.

## **6. Limitation of liability**

- 6.1.** Adam Fox Gardening's total liability arising out of or in connection with the content or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the content to you.
- 6.2.** You expressly understand and agree that Adam Fox Gardening, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- 6.3.** You acknowledge and agree that Adam Fox Gardening holds no liability for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you as a result of providing your content to the Website.

## **7. Links to other websites**

- 7.1.** [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) may from time to time provide on its website, links to other websites, advertisements and information on those websites for your convenience. This does not necessarily imply sponsorship, endorsement, or approval or arrangement between [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) and the owners of those websites. [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) takes no responsibility for any of the content found on the linked websites.
- 7.2.** [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) website may contain information or advertisements provided by third parties for which [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) accepts no responsibility whatsoever for any information or advice provided to you directly by third parties. We are making a 'recommendation' only and are not providing any advice nor do we take any responsibility for any advice received in this regard.

## **8. Third parties**

- 8.1.** [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) does not and will not sell or deal in personal or customer information. We may however use in a general sense without any reference to your name, your information to create marketing statistics, identify user demands and to assist it in meeting customer needs generally. In addition, we may use the information that you provide to improve its website and its services but not for any other use.

## **9. Disclosure of Information**

- 9.1.** [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) may be required, in certain circumstances, to disclose information in good faith and where [www.adamfoxgardening.com.au](http://www.adamfoxgardening.com.au) is required to do so in the following circumstances: by law or by any court; to enforce the terms of any of

our customer agreements; or to protect the rights, property or safety of our customers or third parties.

## **10. Indemnity**

- 10.1.** You agree to indemnify Adam Fox Gardening, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with your content;
  - (b) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or
  - (c) any breach of the Terms.

## **11. Dispute Resolution**

### **11.1. Compulsory:**

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### **11.2. Notice:**

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

### **11.3. Resolution:**

On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties**') must:

- (a) Within 14 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, 30 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in Brisbane, Queensland, Australia.

### **11.4. Confidential**

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent

possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

#### **11.5. Termination of Mediation:**

If 2 weeks have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

#### **12. Venue and Jurisdiction**

The Services offered by Adam Fox Gardening is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Queensland, Australia.

#### **13. Governing Law**

The Terms are governed by the laws of Queensland, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Queensland, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

#### **14. Independent Legal Advice**

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

#### **15. Severance**

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

Approved by

Signature:



Full Name: Adam Fox

Date: 20 November 2019