

Terms and Conditions of Sale

Acceptance of Terms

These terms and conditions, and/or purchase agreement and/or memorandum of understanding (when applicable) shall govern orders for seeds, liners, transplants, plants, supplies and other materials (merchandise) placed with Seller. All negotiations with sales representatives or other agents of Seller are merged herein. No modification of these terms and conditions shall be effective unless in writing signed by Seller. Placement of the order shall constitute Purchaser's acceptance of these terms and conditions. All orders are subject to acceptance by Seller at our office in Arroyo Grande, California.

Limitation of Warranty

Seller warrants, to the extent required by law that merchandise conforms to the description appearing in Seller's product specification sheet and on container labels, within recognized tolerances. SELLER MAKES NO OTHER OR FURTHER WARRANTY, EXPRESS OR IMPLIED. ALL OTHER OR FURTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED. Certain merchandise may be separately warranted by the manufacturer. Seller does not adopt or ratify any manufacturer warranties, express or implied, and Seller shall have no liability there under. Seller does not adopt or ratify any manufacturer warranties, express or implied, made by Purchaser upon resale of the merchandise, and Seller shall have no liability there under. SELLER DOES NOT WARRANT THE DISEASE FREE NATURE OF TRANSPLANTS DUE TO THE PRESENCE OF SEED-BORNE DISEASES INHERENT IN MANY VARIETIES AND WHICH MAY NOT BE APPARENT UNTIL CROP MATURITY. ADDITIONALLY, SELLER RESERVES THE RIGHT TO DUMP ANY TRANSPLANT CROPS WHICH ARE INFECTED WITH DISEASE FROM SEED-BORNE PATHOGENS AND TO RECOVER A PRO-RATA PORTION OF THE GROWING PERIOD REVENUE AS A RESULT OF THIS CROP DISPOSITION.

Limitation of Remedy

PURCHASER'S SOLE AND EXCLUSIVE REMEDY SHALL BE REFUND OF THE PURCHASE PRICE. SELLER'S LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PRODUCTS LIABILITY OR ANY OTHER THEORY OF LIABILITY, IS LIMITED TO THE AMOUNT OF THE PURCHASE PRICE. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

Governing Law, Jurisdiction and Venue

The laws of the State of California, including but not limited to the Uniform Commercial Code as adopted therein, shall govern all matters arising out of or relating to Seller's sale of merchandise.

Indemnification

After transfer of the title of the Crop by the Seller to the Purchaser, its agent or assigns, Purchaser agrees that Seller shall not be liable, and Purchaser shall hold Seller harmless and indemnify Seller, for any claim of loss of Purchaser or any third party resulting from any act or omission of Purchaser, its agents or assigns, or acts of God or third parties, including but not limited to any claim of loss arising from cultural practices.

Prices

All prices in effect for crops are confirmed on the Order Acknowledgement and does not include pricing for Transplanting Services and Seed. Freight not included in pricing of the crop is an additional cost that is quoted separately. Prices are subject to change on future orders.

Payment

Payment is due in accordance with terms specified on invoice and purchase agreement and/or memorandum of understanding (when applicable). All payments shall be made in U.S. funds. In the event of default in the payment of any amount when due, and in addition to all other rights and remedies available to Seller, SELLER SHALL BE ENTITLED TO COLLECT A SERVICE CHARGE OF 1.5% PER MONTH (18% PER YEAR) OR THE MAXIMUM RATE ALLOWED BY LAW, WHICHEVER IS LESS, ON ALL AMOUNTS PAST DUE FROM THE DATE DUE UNTIL THE DATE PAID (unless stated otherwise on purchase agreement with arbitration clause and/or memorandum of understanding). A FEE OF \$25.00 WILL BE CHARGED FOR ANY RETURNED CHECK. Should any arbitration, action, or proceeding arise between parties, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

Title

Legal title to the goods shall remain with Seller until Purchaser takes physical possession of the goods. Identification of the goods under California Commercial Code 2501 shall occur at the moment Purchaser orders any goods from Seller.

Risk of Loss

Risk of loss of goods shall pass to the Purchaser on identification.

Inspection, Notice and Return

Seller shall have no liability for any defect unless notice is given promptly, not to exceed 48 hours after such defect is or should have been discovered. In cases of loss or damage due to transportation and where Purchaser is responsible for freight charges, Purchaser shall file a claim with the transportation company; otherwise, if Seller is responsible for freight, then Purchaser should obtain and forward an inspection report to Seller's Administration Department within 48 hours of delivery. No credit for defective merchandise will be issued without Seller's prior written authorization. IF SELLER DOES NOT RECEIVE WRITTEN NOTIFICATION BY PURCHASER OF A BILLING DISPUTE WITHIN FIFTEEN (15) DAYS OF PURCHASER'S RECEIPT OF A BILLING STATEMENT, SUCH STATEMENT SHALL BE CONCLUSIVELY DEEMED CORRECT ABSENT MANIFEST ERROR.

Delays, Shortages and Substitutions

Seller shall not be responsible for delays in delivery or for losses resulting from such delays. Seller reserves the right to make partial shipment. In the event of shortages, Seller may substitute such other, similar merchandise as is available.

Cancellations

Cancellations of orders must be made prior to sowing/propagation. Orders or part of orders may not be cancelled once production has begun. In the event that an order or part of an order must be cancelled, the customer will be responsible for payment of the product at a pro rata portion of the growing period if the product is not able to be sold elsewhere prior to the original ship date.

Protected Varieties

Varieties listed with the symbols #, PP# (Plant Patent Number), USPP or PAF (U.S. Patent Pending) PVPA (Plant Variety Protection Act Pending, Certificate issued). PVPAP (Plant variety Protection Act Pending), BR (Breeder's Rights, Certificate issued) or BRP (Breeder's Rights Protection Pending) are protected by U.S. or foreign plant patents or plant variety protection laws. These varieties may not be reproduced without authorization. The breeder (or authorized representative) has the right to inspect customer's nurseries during normal business hours to assess compliance with the restrictions on each protected varieties.

Evergreen

These terms and conditions, and/or purchase agreement, with the exception of memorandums of understanding, will remain in effect unless either party provides not less than thirty (30) days written notice to the other of its intent to terminate this agreement. The parties expressly agree that orders already propagated and/or in progress will remain subject to the terms and conditions of this agreement, even if the agreement is terminated via proper written notice.