

TERRA BELLA NURSERY, INC. RENTAL AGREEMENT TERMS AND CONDITIONS

1. Agreement. These Rental Agreement Terms and Conditions and the Rental Agreement, Proposal, Invoice, Quote, or other document(s) incorporating them by reference, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by reference by them, constitute the sole and entire agreement ("**Agreement**") between Terra Bella Nursery, Inc. or its applicable subsidiary, affiliate, or related entity ("**Terra Bella Nursery, Inc.**") and the purchaser ("**Customer**") (together with Terra Bella Nursery, Inc., the "**Parties**," and each a "**Party**") with respect to rental of construction and/or power equipment or other property ("Equipment") by Terra Bella Nursery, Inc. on behalf of or to Customer ("**Services**"). This Agreement supersedes all prior and contemporaneous understandings and agreements, both written and oral regarding the Services. No purchase order, sales order, or statement of work issued in connection with the Services by Customer or a third party shall be binding on Terra Bella Nursery, Inc. unless accepted by Terra Bella Nursery, Inc. in writing. The provision of the Services to Customer shall not constitute acceptance of any terms and conditions contained in any request for proposal, purchase order, statement of work, or other similar document issued by Customer or a third party, nor does it serve to modify or amend this Agreement.

2. Precedence. Should the terms of any proposal, quote, purchase order, sales order or statement of work issued by Customer or a third party conflict with the terms and conditions of this Agreement, the terms of this Agreement shall control. The Parties agree that the Services will be governed by the following documents in this order of precedence: the Rental Agreement, Proposal, Sales order, Invoice, Quote, other document(s) issued by Terra Bella Nursery, Inc. incorporating these terms and conditions by reference, these Rental Agreement Terms and Conditions, other writings signed by the Parties.

3. Acceptance. Acceptance of any portion of the Services, providing payment in whole or in part, taking possession of any Equipment to which this Agreement applies, or acceptance of the Agreement in any form (whichever occurs first) shall constitute acceptance of these Rental Agreement Terms and Conditions and any terms set forth in the document(s) issued by Terra Bella Nursery, Inc. incorporating them by reference.

4. Timing. Terra Bella Nursery, Inc. shall use reasonable efforts to meet any performance dates specified in the Agreement. Customer agrees that any such dates shall only be estimates.

5. Change in Services. If Customer wishes to change the scope of the Services, it shall submit details of the requested change to Terra Bella Nursery, Inc. in writing. Terra Bella Nursery, Inc. may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Agreement.

6. Customer Warranties. Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to execute, deliver, and perform its obligations under this Agreement; (iii) it is not insolvent and is paying all of its debts as they become due; (iv) any payments made pursuant to the Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; (v) each payment made of a debt incurred by it under this Agreement is or was in the ordinary course of its business or financial affairs, and (vi) all information supplied by Customer is complete and accurate.

7. Customer Obligations. Customer shall pay, or reimburse Terra Bella Nursery, Inc. for all prices, fees, expenses, or charges related to the Services when they become due, cooperate with Terra Bella Nursery, Inc. in all matters relating to the Services, and provide such access to Customer's premises and facilities as may reasonably be requested by Terra Bella Nursery, Inc. for the purposes of performing the Services. Customer shall provide all direction, information, approvals, authorizations, notes, contracts, security agreements, financing statements, decisions or materials requested by Terra Bella

Nursery, Inc. to perform the Services. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall notify Terra Bella Nursery, Inc. in advance of any hazards, dangerous conditions and defects. Failure to comply with any portion of this section will constitute a material breach ("**Material Breach**") of the Agreement, alleviate Terra Bella Nursery, Inc. of any responsibility to perform the Services, and enable Terra Bella Nursery, Inc. to terminate the Agreement.

8. Compliance with Law. Each Party agrees to comply fully, at its sole cost, with all applicable federal, state and local laws, rules and regulations.

9. Customer's Acts or Omissions. If Terra Bella Nursery, Inc. performance under the Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Terra Bella Nursery, Inc. shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

10. Fees and Expenses. Customer shall (i) reimburse Terra Bella Nursery, Inc. for all reasonable costs and expenses incurred in connection with the Services or in collecting any late payments and (ii) pay all other amounts due within thirty (30) days of receipt of an invoice from Terra Bella Nursery, Inc. unless specified otherwise in the Rental Agreement, Proposal, Sales Order, Invoice, Quote, or other document(s) issued by Terra Bella Nursery, Inc. incorporating these terms and conditions by reference, in which case the terms of payment specified by Terra Bella Nursery, Inc. in the incorporating document will control. Failure to notify Terra Bella Nursery, Inc. in writing of any dispute regarding an invoice within sixty (60) days of receipt of said invoice waives Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced shall be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense, or counter-claim. Unless specified otherwise in writing, Customer shall pay all costs of transportation, which include but are not limited to government duties, local taxes, customs fees, and shipping costs regardless of whether they arise before, during, or after performance of the Services. All credit card charges of \$3,000 or more will be subject to an additional three percent (3%) charge.

11. Late Payments. All late payments shall bear interest at the lesser of the rate of 1.5% per month (18% per annum) or the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full as reimbursement to Terra Bella Nursery, Inc. for clerical and other expenses incurred as a result of the delinquency, it being expressly agreed it would be impractical or difficult to determine these actual expenses. In addition to all other remedies available to it (which Terra Bella Nursery, Inc. does not waive by the exercise of any rights hereunder), Terra Bella Nursery, Inc. shall be entitled to suspend the provision of any Services if Customer fails to pay any amounts due. If Customer fails to pay any amounts when due, all unpaid sums shall become immediately due and payable. Additionally, Terra Bella Nursery, Inc. shall have the right, but not the obligation, to apply any funds paid by Customer to Terra Bella Nursery, Inc. at any time to satisfy unpaid amounts. Customer also expressly agrees to pay the charges mentioned in this section as liquidated damages and not as penalty representing reasonable and fair compensation for the foreseeable losses/expenses resulting therefrom. Customer agrees to pay Terra Bella Nursery, Inc. a \$25.00 Service Charge on each dishonored check returned. Terra Bella Nursery, Inc. has the right to file a Preliminary Notice if payment is not received. Failure to provide any Preliminary notice information when requested could constitute a revocation of extension of credit.

12. Taxes. Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder, excluding any taxes imposed on, or with respect to,

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Terra Bella Nursery, Inc. income, revenues, gross receipts, personnel or real or personal property or other assets unless otherwise specified in writing.

13. Disclaimer of Warranty. TERRA BELLA NURSERY, INC. MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. TERRA BELLA NURSERY, INC. IS NEITHER A MANUFACTURER OF ANY PARTS USED IN THE SERVICES NOR AN AGENT THEREOF.

14. Normal Use. Any rental rate provided to Customer covers normal use only, not to exceed eight (8) hours per day, forty (40) hours per week or one hundred and sixty (160) hours per four week period. Any excess use will be pro-rated against the appropriated rate and charged to Customer.

15. Limitation of Liability. CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE LOSS OF, DAMAGE TO, DEATH OF, OR INJURY TO ANY PERSON OR PROPERTY CAUSED BY THE USE, CONDITION, POSSESSION, OR STORAGE OF PROPERTY LEASED FROM TERRA BELLA NURSERY, INC. AS WELL AS ALL OTHER RISKS AND LIABILITIES ARISING FROM THE SAME. IN NO EVENT SHALL TERRA BELLA NURSERY, INC. BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING ATTORNEYS' FEES AND COSTS AND EXPERT WITNESS FEES AND COSTS) OF ANY NATURE WHATSOEVER WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL TERRA BELLA NURSERY, INC. AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (i) THE FEES PAID TO TERRA BELLA NURSERY, INC. PURSUANT TO THE AGREEMENT IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (ii) \$25,000. UNLESS SPECIFICALLY AGREED TO IN WRITING, TERRA BELLA NURSERY, INC. WILL NOT BE LIABLE FOR ANY LIQUIDATED DAMAGES OF ANY KIND AND IS NOT BOUND BY ANY AGREEMENT CONTAINING THE SAME.

16. Duty to Indemnify. Customer will indemnify, defend, and hold harmless Terra Bella Nursery, Inc., its agents, employees, affiliates and their respective owners, officers, directors, employees, agents, successors and permitted assigns from any and against any and all claims, losses, expenses, liabilities, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages, costs, penalties, taxes, assessments, charges, punitive damages and expenses of whatever kind, including reasonable attorneys' fees, ("losses"), incurred, or reasonably anticipated to be incurred, by Terra Bella Nursery, Inc. arising from or related to customer's use, operation, possession, condition, or storage of Equipment, customer's failure to perform any portion of the Agreement, Customer's breach or non-fulfillment of any representation, warranty or covenant under the Agreement, Customer's negligent or more culpable act or omission (including any reckless or willful misconduct) in performing its obligations under the Agreement, or failure to comply with any applicable federal, state or local laws, regulations or codes, which losses include but are not limited to (a) loss of or damage to Equipment for any cause; (b) injury to or death of any person; and (c) damage to real or personal property, except those losses that arise from Terra Bella Nursery, Inc. sole negligence or willful misconduct. Customer will

pay interest at the rate of 10% per annum from the day payment is made by Terra Bella Nursery, Inc. through the day Terra Bella Nursery, Inc. is reimbursed by Customer.

17. Normal Wear and Tear. Customer agrees to return Equipment to Terra Bella Nursery, Inc. in the same condition in which it was leased and, at Terra Bella Nursery, Inc. discretion, agrees to compensate Terra Bella Nursery, Inc. for any damage in excess of normal wear and tear. At Terra Bella Nursery, Inc. discretion, a cleaning charge for one day's rental or more may apply.

18. Storage and Use. Customer shall be liable for all damages to or loss of Equipment and liability incurred prior to Equipment's return to Terra Bella Nursery, Inc. If Equipment is to be retrieved by Terra Bella Nursery, Inc. from Customer, Customer agrees to provide a secure storage location and Customer accepts all risk including damage to and liability relative to the Equipment for a reasonable period of time until the Equipment is retrieved by Terra Bella Nursery, Inc. Customer will use and store the Equipment in a careful and proper manner and will not permit it to be operated or used in violation of any and all applicable manuals, user guides, instructions, or applicable federal, state or local statute, ordinance, rule or regulation relating to the possession, use or maintenance of the Equipment as specified by the manufacturer.

19. Customer's Examination of Equipment. Customer acknowledges that it has examined and accepts responsibility for all hitches, bolts, safety chains, stop and tail lighting, hauling tongues and brakes, together with all devices and material used to attach the Equipment to Customer's towing vehicle. Customer further acknowledges that the Equipment is suitable for Customer's needs and understands (without further instructions) its proper operation and use.

20. Failure of Equipment. In the event of any failure of the Equipment, Customer at its expense shall immediately return it to Terra Bella Nursery, Inc. premises. Customer shall not repair Equipment without Terra Bella Nursery, Inc. written authorization.

21. Insurance and Rental Protection Plan. Customer will provide Terra Bella Nursery, Inc. no less than two days before the date on which the Services are to begin and no less than five days before the expiration date of existing insurance an Accord certificate by an "A" rated admitted carrier evidencing the required insurance coverage with Terra Bella Nursery, Inc. as follows: A) Certificate Holder: Terra Bella Nursery, Inc., Attention: Risk Management, PO Box 551, San Diego CA 91912. B) General Liability: Limits Required: \$1,000,000 Per Occurrence/\$2,000,000 Aggregate per year. Endorsement: Additional Insured - Terra Bella Nursery, Inc., its Affiliated Companies, Directors & Officers, Agents and Employees. Primary Insurance: Primary Insurance is required. The insurance must be primary and noncontributory. C) Business Auto (If Applicable): Coverage: Requires \$1,000,000 limit in business auto liability coverage. Physical Damage: Limits must equal or exceed the value of the item(s) leased or rented. Additional Insured: If renting or leasing licensed, on-highway vehicles, such as water trucks, dump trucks or trailers, Terra Bella Nursery, Inc., its Affiliated Companies, Directors & Officers, Agents and Employees must be named as Additional Insured on your Auto Policy. D) Worker's Compensation: Limits Required: Statutory limits required by the state. Employer's Liability \$1,000,000. Waiver of Subrogation: A Waiver of Subrogation is required in favor of Terra Bella Nursery, Inc. E) Property/Physical Damage: Limits Required: Blanket coverage limits must equal or exceed the value of the item(s) leased or rented. Form: Coverage is required to be written on Special Form, including theft. Endorsement: Terra Bella Nursery, Inc. must be named as Loss Payee. Customer must provide Terra Bella Nursery, Inc. a valid Physical Damage certificate to be eligible to receive the Services. By entering into this Agreement, Customer agrees to obtain, and provide Terra Bella Nursery, Inc. satisfactory evidence of, the insurance required by Terra Bella Nursery, Inc. before or at the time the Services begin. Customer shall be liable to Terra Bella Nursery, Inc. for any loss or damage (1) caused by use of

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Equipment in violation of any of the terms of this Agreement or of any law or ordinance, (2) to crane, dragline, or derrick booms, or forklift masts or mast carriages resulting from overloading or exceeding the rated capacity of Equipment or from a collision when a boom is in motion, (3) caused by reckless conduct, or willful or intentional conduct of Customer, (4) to electrical appliances, motors, or other electrical devices, caused by artificial electrical current, (5) due to theft, disappearance, or conversion unless such theft, disappearance, or conversion is immediately documented with the appropriate public authorities (police report), and a copy is given to Terra Bella Nursery, Inc., (6) resulting from the lack of lubrication, the use of improper fuel, or other failure of Customer to perform the required maintenance and servicing of Equipment, (7) caused by exposure to hazardous, corrosive, contaminated or radioactive materials, (8) to the tires or tubes, such as blowouts, bruises, cuts or other causes inherent in the use of Equipment, and/or (9) to Equipment used outside of the Continental limits of the United States of America, Hawaii, Puerto Rico, territories of the United States of America, and Canada.

23. Loss or Destruction of Equipment. Customer is responsible to Terra Bella Nursery, Inc. for any loss or damage to Equipment, except for ordinary wear and tear. If the Equipment is stolen, lost or damaged, Customer shall be liable to Terra Bella Nursery, Inc. for the full replaceable value of the Equipment, together with interest at the highest legal rate on such value, plus all of Terra Bella Nursery, Inc. expenses related to said loss or damage, including, but not limited to, loss of use, appraisal fees, or cost of recovery.

24. Fuel. It is the responsibility of the Customer to use appropriate fuels. Engine damage arising from the use of incorrect fuel will be charged to Customer.

25. Terra Bella Nursery, Inc. Right to Inspection. Terra Bella Nursery, Inc. shall have the right during business hours to enter Customer's premises for the purpose of inspecting the Equipment and making any repairs and adjustments necessary to ensure the proper and safe operation thereof. Terra Bella Nursery, Inc. at its sole discretion may remove the Equipment and replace it with similar Equipment covered by this Agreement at any time during the term of the Agreement.

26. Confidentiality. From time to time during the term of the Agreement, either Party (as "**Disclosing Party**") may disclose or make available to the other Party (as "**Receiving Party**") non-public proprietary and confidential information that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed and promptly thereafter is summarized in writing and confirmed as confidential ("**Confidential Information**"); provided, however, that Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of Receiving Party's breach of this section; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in Receiving Party's possession prior to Disclosing Party's disclosure hereunder; (iv) was or is independently developed by Receiving Party without using any Confidential Information; or (v) is disclosed to a third person by Disclosing Party without similar restrictions. Except as otherwise specified in these Service Terms and Conditions, the Receiving Party shall (x) protect and safeguard the confidentiality of Disclosing Party's Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, (y) not use Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations, and (z) not disclose any such Confidential Information to any person or entity, except to Receiving Party's representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations. If Receiving Party is required by applicable law or legal process

to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party's sole cost and expense, a protective order or other remedy. Each Party shall be entitled to injunctive relief for any violation of this Section.

27. Term. This Agreement shall commence on the date specified in the applicable Rental Agreement, Service Authorization, Proposal, Quote, Sales order or other document(s) incorporating these terms and conditions by reference, or, if no such date is specified, as of acceptance of any portion of the Services by Customer, the Customer providing payment in whole or in part, or Customer taking possession of any Equipment to which this Agreement applies, shall continue until the completion of the Services unless sooner terminated pursuant to this Agreement, and shall automatically renew at the end of each term for successive terms equal in duration to the initial term.

28. Termination by Terra Bella Nursery, Inc. If Customer fails to make any of the payments required by the Agreement, fails to keep the Equipment in proper working condition, misuses the Equipment in any manner, does not keep or perform any of the conditions set out herein, breaches this Agreement or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, Terra Bella Nursery, Inc. may terminate the Agreement and Customers rights under the Agreement, declare the balance of all unpaid amounts and all other charges of any kind required of Customer under the Agreement to be payable immediately, and be entitled to the balance due together with interest at the rate of 10% per annum from the date of notification, and repossess the Equipment without legal process free of all rights of Customer to the Equipment. Customer authorizes Terra Bella Nursery, Inc. or Terra Bella Nursery, Inc. agent to enter onto any premises where the Equipment is located and repossess and remove it. Customer specifically waives any right of action Customer might otherwise have arising out of the aforementioned entry and repossession and releases Terra Bella Nursery, Inc. of any claim for trespass or damage caused by reason of the entry, repossession, or removal. Customer will reimburse Terra Bella Nursery, Inc. for all reasonable expenses of repossession and enforcement of Terra Bella Nursery, Inc. rights and remedies, together with interest at the rate of 10% per annum from the date of payment. Notwithstanding any other provision of this Lease, Customer will pay, subject to any limits under applicable law, Terra Bella Nursery, Inc. attorneys' fees and legal expenses of any kind to enforce any provision in this Agreement.

29. Force Majeure. Terra Bella Nursery, Inc. shall not be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay caused by or resulting from acts or circumstances beyond Terra Bella Nursery, Inc. reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, an inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

30. Communications. All notices, requests, consents, claims, demands, waivers and other communications (each, a "**Communication**") must be in writing and addressed to the other Party at the address provided in the Rental Agreement, Proposal, Invoice Quote, or other document(s) incorporating these terms and conditions by reference, or such other address that the receiving Party has designated in accordance with this Section. Unless otherwise agreed to in writing, all Communications must be delivered by facsimile, e-mail, personal delivery, courier or certified or registered mail (return receipt requested, postage prepaid). A Communication is effective

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only on receipt by the receiving Party if the Party giving the Communication has complied with the requirements of this Section. Communications shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) if by courier or personal delivery, on the date of delivery, and (iii) if by mail, two (2) days after the date of mailing.

31. Applicable Law/Venue. This Agreement (and all matters arising out of or relating to it) will be governed in all respects by the laws of the State where the Services are performed without regard to any choice or conflict of law provisions. When applicable, each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in San Diego County in the State of California and waives all claims that such venue is in an inconvenient forum.

32. Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS), AND WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY (i) UNDERSTANDS THAT THIS IS A WAIVER OF IMPORTANT LEGAL RIGHTS AND (ii) ACKNOWLEDGES HAVING HAD A REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECTS WITH LEGAL COUNSEL.

33. Dispute Resolution. Any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussion between senior management of the Parties. If informal discussion fails to produce a resolution, the Parties must then attend nonbinding mediation in the San Diego County, California with a mutually agreeable mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute or controversy arising out of or relating to this Agreement shall be settled by binding arbitration. Either Party may initiate arbitration, which shall be conducted in San Diego, California in accordance with the commercial arbitration rules of the American Arbitration Association. The party prevailing in the arbitration shall have all of its reasonable costs, fees and expenses, including, without limitation, attorneys' fees as invoiced and house counsel fees at \$500 per hour incurred in connection with the arbitration, as well as all costs, fees, and expenses of the arbitrators, reimbursed by the non prevailing party. A prevailing party is a party that recovers at least 75% of its total claims or that is required to pay out no more than 25% of the claims made against it. The arbitrator shall not have the power to award any punitive damages.

34. Enforcement. Subject to Section 34, Customer shall pay all costs Terra Bella Nursery, Inc. may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

35. Severability. If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

36. Amendments. This Agreement shall only be modified or amended by an instrument in writing signed by the Parties. Any changes, additions, stipulations or deletions, by Customer, shall not be deemed to be agreed to or binding upon Terra Bella Nursery, Inc. unless agreed to in writing in the form of an amendment signed by Terra Bella Nursery, Inc. and Customer.

37. No Waiver. No exercise, nor any failure or delay by either Party in the exercise of, any right or remedy available hereunder, at law or in equity will be deemed an election of remedies or a waiver of any such rights and/or remedies. Remedies hereunder shall not be exclusive, but shall be

cumulative and in addition to all other remedies existing at law or in equity. The receipt, acceptance and/or negotiation of, or any endorsement on, any check or draft received from one Party will not operate to waive or release, in whole or in part, any claim of the other Party arising hereunder or in connection herewith (except as to the portion thereof actually received by the other Party in cash or other good funds)

38. Assignment. Terra Bella Nursery, Inc. may assign any of its rights or obligations under the Agreement without the prior written consent of Customer. If an assignee agrees to assume the obligations of Terra Bella Nursery, Inc., Customer agrees that Terra Bella Nursery, Inc. shall be released from all further liability hereunder. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement or sublet or hire out the Equipment without the prior written consent of Terra Bella Nursery, Inc. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Customer of any of its obligations under this Agreement. Customer agrees to keep the Equipment free from any lien and encumbrance of any kind.

39. No Third Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether expressed or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

40. Headings. Headings are for reference and do not affect the interpretation of the Agreement.

41. Time to Bring Claim. No claim which concerns a dispute arising under this Agreement may be commenced by Customer more than one year after the Services are performed.

42. GPS and/or Tracking Device User Agreement/Privacy Notice. For Equipment equipped with GPS and/or tracking devices, Customer understands that data concerning the machine, its condition, and operation will be transmitted to Terra Bella Nursery, Inc. and/or its agents to better serve Customer and improve upon Terra Bella Nursery, Inc. products and services. The information transmitted may include but is not limited to machine serial number, machine location, operational data, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Terra Bella Nursery, Inc. recognizes and respects customer privacy. Terra Bella Nursery, Inc. and/or its agents will not sell or rent collected information to any third party and will exercise all reasonable efforts to keep the information secure. Customer, by executing the Agreement, understands the disclosures in this Section and grants permission to allow the referenced data to be accessed by Terra Bella Nursery, Inc., and /or its agents.

43. Title to Goods. Terra Bella Nursery, Inc. retains title to goods. Customer hereby grants to Terra Bella Nursery, Inc. a security interest in any purchased goods and all proceeds thereof described in this agreement to secure the performance of all of Customer's obligations under this Agreement.

44. Equipment. Should the Agreement include the purchase of machinery from Terra Bella Nursery, Inc., when the machines necessary for the Agreement have been identified and appropriated, Customer agrees on demand to execute and deliver to Terra Bella Nursery, Inc. all notes, contracts, security agreements, and financing statements required by Terra Bella Nursery, Inc. to evidence the transaction. In the event Customer fails to execute and deliver said notes, contracts, security agreements and financing statements to Terra Bella Nursery, Inc., the entire balance of the purchase price of the equipment shall, at Terra Bella Nursery, Inc. option, become immediately due and payable.

45. Transportation. Customer understands and consents to Terra Bella Nursery, Inc. use of third party vendors to provide transportation services ("**Transportation Company**"). Customer also agrees that Terra Bella Nursery, Inc. responsibility for shipment of any goods ceases upon delivery of said goods to a Transportation Company, and any claims for shortages,

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delays or damages occurring thereafter shall be made timely by Customer directly to the Transportation Company.

46. Used Goods. Should the Agreement include the purchase of used machinery, parts, or other equipment, said used machinery, parts, and other equipment are sold "AS IS" AND "WITH ALL FAULTS." TERRA BELLA NURSERY, INC. MAKES NO WARRANTY RELATED TO THE TITLE OF THE GOODS FOR SALE UNDER THIS AGREEMENT, NOR TO THE RIGHTFUL TRANSFER OF THE GOODS, NOR TO THE EXISTENCE OF SECURITY INTERESTS, LIENS, OR OTHER ENCUMBRANCES AGAINST THE GOODS. HOWEVER, TERRA BELLA NURSERY, INC. WARRANTS THAT, AT THE TIME OF SALE, TERRA BELLA NURSERY, INC. DID NOT KNOW OF ANY HOSTILE CLAIM OF TITLE OR ANY ENCUMBRANCES AGAINST THE GOODS FOR SALE UNDER THIS AGREEMENT.

47. Consent to Share Customer Data. By accepting the Agreement, Customer consents to Terra Bella Nursery, Inc. sharing information relating to or generated pursuant to this Agreement, or the Goods & Services, including Confidential Information, with its affiliates, subsidiaries, sister companies, or vendors. Customer acknowledges and agrees that it is directing Terra Bella Nursery, Inc. to intentionally disclose such information, including Customer's personal information, if any, to its affiliates, subsidiaries, sister companies, or vendors and agrees that such disclosure is not a sale or received for valuable consideration.

48. No Waiver. Under no circumstance does Terra Bella Nursery, Inc. waive any claim against Customer, and in all circumstances Customer shall be responsible for accessories such as air hoses, tool steel, electric cords, blades, welding cables, LPG tanks, fuel containers and other similar items.

49. Air Pollution Permit Compliance. Customer agrees to fully read and understand all terms and conditions of any State or Federally issued air permit for Equipment being rented. Customer agrees as a "Rental Operator", to comply with all requirements of any issued air permit and all applicable local, state and federal air quality rules and regulations. Customer fully understands that permitted Equipment is subject to enforcement action by Local, State and Federal regulatory agencies for any violations of the listed permit conditions and local, state and federal air quality rules and regulations.

50. EMISSIONS REQUIREMENTS: CAL AIR RESOURCES BOARD 5 MIN IDLING LIMIT WHEN OPERATED IN CAL, ANY OFF-ROAD DIESEL VEHICLE MAY BE SUBJECT TO THE CAL AIR RESOURCES BOARD IN-USE OFF-ROAD DIESEL VEHICLE REGULATION. IT THEREFORE COULD BE SUBJECT TO RETROFIT OR ACCELERATED TURNOVER REQUIREMENTS TO REDUCE EMISSIONS OF AIR POLLUTANTS. FOR MORE INFORMATION, PLEASE VISIT THE CAL AIR RESOURCE BOARD WEBSITE AT: [HTTP://ARB.CA.GOV/MSP/ORDIESEL/ORDIESEL.HTM](http://arb.ca.gov/msp/ordiesel/ordiesel.htm).

51. Personal Property Tax. Customer agrees to pay Terra Bella Nursery, Inc. an additional 0.75% charge on the rental price of qualified heavy equipment as defined in California Civil Code 1656.5 ("PPT"). The PPT is an estimate of the personal property tax Terra Bella Nursery, Inc. will be required to remit for the rental of certain qualified heavy equipment by Customer. In the event the PPT exceeds actual amounts owed by Terra Bella Nursery, Inc., Customer acknowledges and authorizes the excess to be remitted to the State Board of Equalization for deposit into the State of California General Fund as required by law.

52. Survival. Provisions of this Agreement that by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Section 13 (Disclaimer of Warranties), Section 15 (Limitation of Liability), Section 16 (Duty to Indemnify), Section 23 (Insurance and Rental Protection Program), Section 27 (Confidentiality), Section 32 (Applicable Law/Venue), Section 33 (Waiver of Jury Trial), Section 34 (Dispute Resolution), Section 35 (Enforcement), Section 42 (Time to Bring Claim), and Section 53 (Survival).

53. Prevailing Wage. Unless specified otherwise in writing, the Goods & Services shall be quoted, performed or provided with the assumption that any

local, state, or federal prevailing wage laws, or public or private collective bargaining agreements, do not apply. Goods & Services performed or provided pursuant to a local, state, or federal prevailing wage law, or a public or private collective bargaining agreement, will be billed at applicable rates, which Customer agrees to pay.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.