

Terra Bella Nursery, Inc. Terms & Conditions of Sale

All products and/or materials, supplies and equipment ("goods") purchased by buyer shall be sold by Terra Bella Nursery, Inc. ("Seller") subject to the following terms and conditions.

1. **Prices, Payment, Late Charges and Sales Tax.** Prices do not include delivery unless otherwise specified. Delivery charges will be charged to buyer at Seller's standard rates. The terms of all sales shall be C.O.D. unless buyer has established an open account with Seller, in which event all open accounts require full payment of the purchase price and other applicable charges due within 30 days of invoice date. If full payment is not received by such date, buyer agrees to pay Seller late charges equal to one and one half percent (1 ½%) of the amount of such delinquent payment or any portion thereof. Accrued late charges are payable on a monthly basis for each and every calendar month for which full payment, together with accrued late charges, is delinquent. These terms are the full and final agreement between buyer and Seller and supersede all other agreements. Buyer shall be responsible for the payment of all state and local sales and use taxes and all taxes of a similar nature, unless a valid resale certificate has been filed at Terra Bella Nursery, Inc.
2. **Delivery and Irrevocability.** In any event in which Seller delivers goods to a buyer, Seller shall only be obligated to deliver goods to the curb of the premises to which buyer requests delivery. Seller shall have no liability for any damages caused or claims made as a result of deliveries to any locations other than the curb, as requested by buyer. Seller shall not be responsible for damages to the premises or to improvements thereon, including without limitation, curbs, sidewalks, pavement and landscaping. While Seller's drivers can voluntarily assist in offloading, it is the responsibility of the buyer to arrange the necessary equipment and labor to offload. Orders requiring more than one hour to off-load are subject to a \$25 per quarter hour Standby Charge. Buyer shall be responsible for loss or damage to Seller's equipment resulting from off-loading of goods by personnel and/or equipment. Buyer acknowledges that Seller may not have on hand in Seller's open stock all of the items purchased by buyer, and that the Seller will be relying on buyer's agreement to purchase such items as a basis for Seller to enter into binding agreements with others for the delivery of such items. Because of Seller's reliance, buyer hereby agrees that buyer's obligation to purchase the goods shall be unconditional and irrevocable. Seller may, upon its sole discretion, accept for return a portion of the goods if such goods are returned within five (5) days of delivery/purchase and are in the same condition as delivered subject to a restocking fee equal to thirty percent (30%) of the purchase price of such goods. Buyer must have prior approval from Seller and must be accompanied by the original invoice.
3. **Will call orders.** All Will Call orders must be paid in full prior to any order being fulfilled and must be picked up within 7 days of being notified the order is ready for pick up. Any orders that are not picked up within the allotted time frame will be sent back to the store and/or growing grounds and will be subject to a restocking fee equal to thirty percent (30%) of the purchase price of such goods.
4. **Agreement to Indemnify and Hold Harmless.** If buyer requests that Seller load goods into buyer's vehicle, buyer acknowledges: i) excessive weight can cause damage to a vehicle and can also alter the handling of a vehicle, making it more prone to accident. Buyer waives any claims for damages to the vehicle and assumes the risk of driving a loaded vehicle. ii) Forklifts and other machinery/equipment may cause damage to a vehicle during the loading process. iii) Seller is unable to determine the maximum payload of any vehicle and/or trailer combination. iv) Buyer certifies that any vehicle and/or trailer combination is adequately equipped and capable of safely transporting the amount of goods which buyer requests. v) Buyer holds Seller harmless from all claims and damages that may arise as a result of the actions described in 3i through 3iv. This includes any liability arising from property damage, personal injury, cost of defense and/or payment of damages awarded against Seller.
5. **Execution of Agreement.** Buyer agrees to Seller's terms and conditions of sale by signing invoice/agreement or by purchase of goods. However, under circumstances where buyer is unavailable or does not sign invoice/agreement (i.e. telephone orders, internet orders, signature on file orders, etc.), buyer agrees upon accepting goods, that buyer is bound by terms and conditions of sale.
6. **Seller's Right to Substitute.** Seller shall have the right to substitute goods of comparable quality for goods ordered by buyer which are not currently in Seller's open stock. The Seller's obligation to sell the goods to the buyer is subject to Seller's inventory on hand in open stock, which is subject to prior sale, and if Seller is unable to furnish some or all of the goods specified, Seller hereby reserves the privilege to cancel such items and deduct the price thereof from the balance owed by buyer.
7. **Delays and Interruptions.** Seller's obligation to sell and deliver the goods to buyer is subject to shipping charges by buyer, labor slowdowns, work stoppages, availability of materials, adverse weather, availability of transportation, acts of carriers, acts of God and other causes beyond Seller's reasonable control.
8. **Nonconforming Goods.** Buyer shall notify Seller in writing within twenty-four (24) hours after delivery of any nonconforming goods, deficiencies or shortages. Otherwise, all such claims shall be deemed waived by buyer. The use by buyer of any goods claimed to be nonconforming or deficient shall constitute acceptance of such items by buyer. Unless Seller otherwise specifically agrees, buyer shall have no right to withhold payment of the purchase price or to adjust the amount of purchase price due to any such claim; the sole remedy being the replacement or repair by Seller of nonconforming or deficient items, which shall be in lieu of buyer's right to consequential damage or any other remedy available under applicable laws, provided, however, that Seller shall have no obligation to replace or repair any such items if buyer is in default of this agreement in any respect. Any goods delivered to buyer but not accepted shall be held and stored by buyer in commercially reasonable manner, so as to prevent damage and retain in the same condition as delivered and Seller shall be given a reasonable amount of time to remove goods.
9. **Personal Property.** Until full payment of the purchase price is received, all goods shall remain Seller's personal property and shall not become fixtures or otherwise a part of any real property, regardless of the manner in which they may be placed upon, affixed or attached thereto.
10. **Title.** Title to all goods shall be retained by Seller until full payment of the purchase price is received. Risk of loss for all goods shall pass to buyer at the time title passes.
11. **Removal of Goods.** Goods delivered to buyer shall not be moved from the location to which delivered until full purchase price has been paid, except with prior written consent of Seller.
12. **Assignment.** No transfer, assignment, pledge, renewal or extension of all or a portion of this agreement, or any loss, injury or destruction of the goods for any cause whatsoever shall release buyer from buyer's obligations or operate to pass title to all or any portion of such goods to any third party. Seller shall have the right to assign all or a portion of its rights under this agreement and such assignee shall be entitled to all the rights and remedies of Seller without liability for any right or recoupment setoff or counterclaim which buyer may have against Seller.
13. **Disclaimer of Warranties.** Any description of the goods on an invoice or purchase order is for the sole purpose of identifying the goods and any such description is not part of the basis of bargain, and does not constitute a warranty that the goods shall conform to that description. The use of any sample in connection with this contract is for illustrative purposes only and is not part of the basis of the bargain and is not to be construed as a warranty that the goods will conform to the sample. No agent, representative or employee of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the goods and no such affirmation, representation or warranty shall be enforceable by buyer. SELLER GIVES NO WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED, AS TO THE GOOD SOLD, INCLUDING BUT NOT LIMITED TO VARIETY OR PRODUCTIVITY OF ANY GOOD SOLD. SELLER DOES NOT WARRANT THAT THE GOODS ARE MERCHANTABILITY OR ARE FIT FOR ANY PARTICULAR PURPOSE. The entire risk as to the quality and performance of the goods is with the buyer. The goods are being sold on an as-is basis. Should the goods prove defective following their purchase, buyer assumes the entire cost of all necessary servicing and repair.
14. **Liens and Insurance.** Prior to full payment of the purchase price, buyer shall not permit any lien, encumbrance or security interest to attach to the goods or to be levied upon the goods under legal process, or dispose of the goods, other than in the ordinary course of business, or permit anything to be done that may impair the value of the goods. Buyer shall insure the goods against risk of loss or damage by fire, including extended coverage, theft and such other casualties in an amount equal to full replacement value. Loss payable endorsement on all such policies to be payable to Seller and buyer as their interest may appear.
15. **Buyer's Default.** Occurrence of any of the following with respect to buyer shall constitute an event of default under this agreement: i) failure to pay when due the balance of the purchase price; ii) failure to pay when due any costs or expenses necessary to preserve or protect the goods; iii) failure to perform any covenants or obligation in this agreement; iv) giving any representation or warranty or furnishing any financial information to Seller that should prove untrue or materially misleading; v) refusal by buyer to accept delivery of all or a portion of the goods or buyer's rejection of all or a portion of the goods upon delivery; vi) business failure or failure or inability to pay debts in the ordinary course or as they become due, or insolvency within the meaning of the federal bankruptcy laws or state insolvency laws or otherwise; vii) commission of any act of bankruptcy, assignment for the benefit of creditors, composition of creditors or commencement of any proceedings, whether voluntary or involuntary, under any federal or state bankruptcy, reorganization or insolvency laws; or viii) attachment or garnishment of or levy of execution upon the assets, property, business or income of buyer or appointment of a receiver or trustee or for any part of the assets, property or business of buyer.
16. **Seller's Remedies upon Buyer's Default.** Upon the occurrence of any event of default, Seller shall have all the rights and remedies available to Seller under California Uniform Commercial Code or other applicable law and all rights provided in this agreement, all of which rights and remedies shall, to the fullest extent permitted by law, be cumulative. Without limiting the generality of the foregoing, upon the occurrence of any such event of default, Seller shall have the right, either in person or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a court, to take possession of all or part of goods, to reclaim the goods, to withhold delivery or stop delivery in transit, or otherwise, or to rescind this agreement, to pursue its rights and remedies under applicable mechanic's lien laws, and to take such other action as Seller may deem necessary and appropriate for the protection of its interests. After any such event of default, Seller may require buyer to assemble the goods and to make them available to Seller at a place designated by Seller which is reasonably convenient to Seller and buyer. Seller shall have the right to take immediate possession of the goods and shall have the right to take such action as may be required to enforce buyer's obligations to Seller, including the retention of the goods without accounting to buyer, sale of the goods at public or private sale upon reasonable notice to buyer or Seller's intent to resell; such sale to include, at the option of Seller, all goods reclaimed by Seller, goods not yet delivered to Seller, goods then in the process of being grown, altered, manufactured or constructed, and the preparation, alteration, manufacture, or construction of which had not yet begun at the time of buyer's default. Alternatively, Seller may resell for scrap or salvage all goods in the process of being grown, altered, manufactured or constructed at the time of buyer's default. Seller shall not be accountable to buyer for any proceeds received by Seller as a result of such private or public sale, but Seller shall have the right to recover from buyer the difference between such resale price and buyer's purchase price of the goods, together with all expenses of sale, including without limitation, transportation, removal, storage, repair, maintenance, sales commission and such other expenses as may be allowed under the California Uniform Commercial Code and other applicable laws, less any expenses actually saved by Seller in consequence of buyers default. Seller shall have the right to purchase the goods at any such private or public sale.
17. **Attorney's Fees.** Buyer agrees to pay Seller all attorneys' fees and costs and expenses of enforcement of this agreement, including without limitation, service of process fees, filing fees, court and court reporter costs, investigative costs, expert witness fees, appraisal fees, receiver's fees, keeper fees and the costs of any bonds, whether otherwise taxable or not incurred by Seller: i) in any action or proceeding pertaining to this agreement and the rights and obligations of the parties; ii) in enforcing Seller's rights and the pursuit of Seller's rights and remedies under the California Uniform Commercial Code, or mechanic's lien laws, or any other applicable law, whether such enforcement proceeding by way of claim and delivery, attachment, nonjudicial or judicial sale and foreclosure, or any other proceeding for all or any portion of the amounts payable under this agreement; iii) in obtaining a judgment against buyer for all or any portion of the amounts payable under this agreement; iv) in enforcing any judgment which may be obtained in such proceeding, including without limitation, the judicial sale of underlying real property under the mechanic's lien laws, or any appeal from such proceeding; v) in representing Seller in federal bankruptcy proceedings or state insolvency proceedings or any Creditors; arrangements or other creditors' proceedings initiated by or against buyer.
18. **Time and Waiver.** Time is of the essence under this agreement. The waiver of any default shall not be a waiver of any substantial default. Seller's acceptance of partial or delinquent payment or Seller's failure to exercise any right it may have shall not waive any obligation of buyer or any rights of Seller or otherwise modify this agreement, or waive any other similar matter.
19. **Notice.** Any notices or communications to be given in this agreement shall be deemed given on the date of delivery if personally delivered or seventy-two (72) hours after mailing, if mailed to the party to whom notice is to be given by first-class, registered or certified mail, postage prepaid, at the address set forth in this agreement, or to such other address as may be provided in writing by such party.
20. **Successors and Assigns.** All rights of Seller shall inure to the benefit of its successors and assigns. All obligations of buyer shall bind buyer's heirs, beneficiaries, legal representatives, successors and assigns.
21. **Governing Law and Severability.** This agreement is entered into at San Diego, California and shall be governed by and construed in accordance with the laws of the State of California. If any provision of this agreement is invalid or contravenes any applicable law, such provision shall be deemed not to be a part of this agreement and shall not affect the validity or enforceability of the remaining provisions. All legal proceedings concerning disputes arising out of or in connection with this agreement or purchase of the goods, shall be commenced only in the State of California, San Diego County Judicial District. **California Nursery Stock Certificate for Interstate & Intrastate Shipments No. C0787.001** This plant material or nursery or premises from which the shipment was made has been inspected and found free from especially injurious plant pests and disease symptoms. THIS SHIPMENT NEED NOT BE HELD FOR INSPECTION IN CALIFORNIA Issued by S.D. County of Agriculture & California Dept. of Food & Agriculture 1220 N Street, Sacramento CA 95814

California Proposition 65

RAW WOOD PRODUCT EXPOSURE

 **WARNING:** Drilling, sawing, sanding or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or other safeguards for personal protection. For more information go to www.P65Warnings.ca.gov/wood

 **WARNING:** This product can expose you to chemicals, including Titanium Dioxide, which is known to the State of California to cause cancer, and Methanol, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov