



Terms and Conditions of Sale – Retail Ready

Skagit Horticulture LLC, its affiliates, related entities and assigns are referred to herein as the Seller and the customer or person or entity purchasing goods and/or services (“Products”) from Seller is referred to as the Buyer. These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale of the Products and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive state of the terms of this agreement governing the sale of Products by Seller to Buyer. SELLER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS. Seller reserves the right in its sole discretion to refuse order.

1. Terms of Payment

Unless otherwise specified by Seller, payment for Product shipped on approved credit is net thirty (30) days from date of Seller’s invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys’ fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until paid. Should Buyer’s financial responsibility become unsatisfactory to Seller, Seller may discontinue deliveries.

2. Pricing

Unless otherwise specified in writing by Seller, the price quoted or otherwise specified by Seller shall remain in effect for ten (10) days. All prices are exclusive of all federal, state and local taxes, use and similar taxes, all import, export or customers duties, tariffs and like charges, transportation and insurance, all of which are to be borne by Buyer.

3. Shipment and Delivery

Shipments are made F.O.B. Seller’s shipping point. Risk of loss or damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Freight estimates are available upon request. Freight charges may vary between initial estimate and the actual cost incurred at the time of shipment. Seller reserves the right to invoice actual freight charges incurred unless otherwise mutually agreed upon.

4. Product Returns

Seller shall have no liability for any defect unless Buyer gives prompt written notice, not to exceed 48 hours after delivery. No credit for defective merchandise will be issued without Seller’s prior written authorization.

5. LIMITED WARRANTY

THE PRODUCTS ARE SOLD IN AN “AS-IS, WHERE IS, WITH ALL FAULTS” CONDITION AND SELLER DOES NOT MAKE AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WARRANTIES AS TO THE DESCRIPTION, QUALITY, PURITY, GENETIC STABILITY, PRODUCTIVENESS, FREEDOM FROM DISEASE, PATHOGEN OR VIRUS. SELLER MAKES NO OTHER OR FURTHER WARRANTY, EXPRESS OR IMPLIED, ALL OTHER OR FURTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

Certain merchandise may be separately warranted by its manufacturer. Seller does not adopt or ratify any manufacturer warranties, express or implied, and Seller shall have no liability thereunder.

6. LIMITATION OF REMEDY AND LIABILITY

THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPLACEMENT OF THE PRODUCT. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS PROVIDED

BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER’S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term “consequential damages” shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.

7. Excuse Of Performance

Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, freight embargoes, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or action, storm, flood, drought, frost, interruption of power, or other unforeseen circumstances or causes beyond Seller’s reasonable control.

8. Assignment

Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

9. Buyer’s Duties

Buyer assumes sole responsibility for determining the suitability of the Product for Buyer’s contemplated use. Buyer represents and warrants it is not relying on Seller for assistance in selecting Products for Buyer. In no event shall Seller be responsible for any damage, injury or loss caused by the misuse of the Product or Buyer’s negligence.

10. Cancellation

Cancellations of any Product order is subject to approval by Seller in its sole discretion.

11. Indemnity

Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, loss or damage of any kind whatsoever, including consequential damages, and damages from tort, negligence, strict liability, breach of warranty, breach of contract or other legal theory, along with costs including reasonable attorneys’ fees connected therewith, brought by or on behalf of any person or entity arising out of or relating in any manner to the Products which are the subject hereof. Buyer’s agreement to indemnify, defend and hold Seller harmless is based upon the express understanding that said obligations apply whether such injury or damage be due, or alleged to be due, in whole or in part to the negligence or other liability producing conduct on the part of the Seller.

12. General Provisions

These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. The interpretation of this agreement and of the rights and obligations of the parties under this agreement, and all questions concerning the validity of this agreement, shall be governed by the laws of the State of Washington. Any suit, action or proceeding brought by either party to enforce any term or provision of this agreement, or to determine the validity of this agreement, or concerning this agreement or the subject hereof in any manner, shall be commenced and maintained solely in state or federal courts having jurisdiction in King County, Washington. The Convention for Convention for the International Sales of Products shall not apply to this agreement.

