

**TERMS AND CONDITIONS OF SALE**

**1. Applicability.** These General Terms and Conditions of Sale apply to all proposals and quotations submitted by Seller (as defined below), to all purchase orders received by Seller, and to all sales of goods sold and deliveries made by Seller.

**2. Parties.** Vaughan's Horticulture, LLC, an Illinois Limited Liability Company, together with each of its affiliates is referred to herein as "Seller" and the person, firm or other entity purchasing as indicated on the front hereof is referred to herein as "Buyer." All materials, goods, or merchandise described on Seller's price list or purchase order, regardless of type, are referred to herein as "Products."

**3. Acceptance of Purchase Orders.** Quotations furnished by Seller do not constitute an offer to sell. No written or oral order of Buyer shall become a binding obligation of Seller unless and until Seller has issued its order confirmation as provided herein. Seller reserves the right to reject any order based on Buyer's creditworthiness. Sales of Products hereunder are subject to and include the Terms and Conditions of Sale set forth herein and are expressly conditioned upon Buyer's assent to any Terms and Conditions of Sale herein which are additional to or different from any terms or conditions of sale contained in any order submitted by Buyer. Without limiting the generality of the foregoing, no acknowledgment by Seller of or reference by Seller to or performance by Seller under any order submitted by Buyer shall be deemed to be an acceptance by Seller of any terms or conditions contained in such order which are additional to or contrary to the Terms and Conditions of Sale contained herein.

**4. Order Cancellations.** Seller reserves to its sole judgment and discretion when and under what circumstances it will approve any order changes and/or cancellations. If cancellations are accepted, a cancellation charge may be charged to Buyer in accordance with Seller's then current cancellation policy.

**5. Prices and Payment.** (a) Prices do not include applicable VAT, sales, use, excise, ad valorem and similar taxes. All such taxes will be added to Seller's invoice as a separate charge and will be paid by Buyer.

(b) Unless otherwise provided on Seller's order confirmation, the purchase price for Products sold hereunder shall be due and payable in the full invoice amount in U.S. dollars within 30 days from the date of invoice; provided, however, that Seller reserves the right in its sole discretion to cancel or change credit terms and to request advance payment at any time. Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness or obligation owing by Buyer to Seller, without prejudice to and without discharging the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend or notation appearing on, referring to, or accompanying such check or remittance.

(c) Any amounts payable to Seller hereunder which are not paid when due shall thereafter bear interest at the rate of one percent (1%) per month or the maximum amount permitted by applicable law, whichever is less. Time is of the essence of all payments due hereunder, and if any payment due Seller is collected at law, or through an attorney-at-law or under advice therefrom, or through a collection agency, Buyer agrees to pay all costs of collection, including, without limitation, all court costs and reasonable attorney's fees.

(d) Upon the failure of Buyer to make any payment when due hereunder, or in the event of default, breach or repudiation by Buyer of any obligation to Seller, whether contained herein or otherwise, or if Buyer becomes insolvent, calls a meeting of its creditors, or if any bankruptcy, insolvency, reorganization or arrangement proceeding is commenced by or against Buyer, Seller shall have (in addition to all rights and remedies Seller may have at law or in equity) the option to: (i) cancel this and any other transaction with Buyer; (ii) defer any deliveries to Buyer; or (iii) declare the full purchase price of all Products sold hereunder immediately due and payable.

(e) If Seller agrees to vary or relax the method or terms of payment with respect to any order placed by Buyer, such variance or relaxation shall not affect in any manner whatsoever Seller's right thereafter as to that or any other order to require payment in accordance with the terms specified herein.

**6. Delivery and Risk.** Unless otherwise agreed in writing between Buyer and Seller, all prices are FOB Buyer's facility specified on Seller's written order confirmation, and include standard packaging. Seller agrees to make arrangements, for and on behalf of Buyer, for the carriage and insurance of the Products to the address shown on the front side hereof, by such means and carrier as determined by Seller unless otherwise designated by Buyer in writing. In all cases Buyer shall reimburse Seller for any additional costs or charges for express delivery or similar shipment. Unless otherwise provided on the front hereof, any arrangements and expenses incurred by Seller for carriage and insurance of Products shall be for the account of Buyer, shall be billed to Buyer and shall be due and payable together with the purchase price for the Products. Seller may ship Products in partial shipments and Seller reserves the right to invoice for partial shipments. Buyer acknowledges that the delivery date shown on the front hereof is its requested delivery date. Seller shall use reasonable efforts to arrange shipment of Products in accordance with any delivery dates set forth on the front side hereof, but such delivery dates are not guaranteed.

**7. Deferred Deliveries.** If Seller defers deliveries at Buyer's request, Buyer shall indemnify Seller against all loss and additional expense incurred by Seller in connection with such deferred deliveries including, without limitation, demurrage, handling, storage, insurance and similar charges. Transfer to storage shall be considered delivery for all purposes hereunder, including invoicing and payment, and during such storage Buyer shall bear all risks of loss or damage to Products in accordance with the terms of paragraph 6.

**8. Limited Warranty.** All orders are subject to crop conditions at time of shipment and confirmation by Seller. Seller warrants, solely to the extent of the invoice price, that the Products sold hereunder shall be as described, within recognized tolerances. **EXCEPT AS EXPRESSLY PROVIDED IN THIS PARAGRAPH, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE, AND SELLER HEREBY DISCLAIMS THE SAME.**

**9. Limitation of Liability.** Seller shall only be liable for those defects, shortages or nonconformities of Products that directly result from Seller's breach of its obligations hereunder. In no event shall Seller be liable to Buyer or any other person, firm or entity ("Person"), whether in contract or in tort, or under any other legal theory, (including, without limitation, negligence or strict liability) for lost profits or revenues, loss of use or similar economic loss, or for any indirect, special, incidental, consequential or similar damages arising out of or in connection with the sale, delivery, non-delivery, use, condition, ownership, possession, selection, transportation, or return of any of the Products, or for any claim made against Buyer by any other Person, even if Seller has been advised of the possibility of such claim. In no event shall Seller's liability under any claim made by Buyer exceed the invoice price of the Products in respect of which such claim is made, which claim may be satisfied by Seller providing Buyer with a credit against outstanding or future invoices.

**10. Inspection; Limitation of Actions.** Buyer shall promptly inspect all Products upon receipt. Anything herein to the contrary notwithstanding, to the extent that any defects, shortages or nonconformities of Products are discoverable by inspection upon receipt by Buyer, all obligations of Seller with respect to such defects, shortages or nonconformities shall be deemed to be satisfied, and all Products shall be deemed to be free of such defects, shortages or nonconformities, unless Buyer notifies Seller of such defects, shortages or nonconformities in writing within 48 hours after the date of receipt. Any defects or nonconformities of Products that are not immediately discoverable by inspection upon receipt by Buyer shall be reported to Seller in writing immediately, but in no event later than 24 hours, after discovery. No action, regardless of form, arising out of or in connection with the sale of Products hereunder (other than an action by Seller for any amount due to Seller from Buyer) may be brought more than ten weeks after the date of receipt.

**11. Tender.** Where Buyer has declared or manifested an intention not to accept delivery in accordance with the provisions hereof, no tender shall be necessary, but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to deliver in accordance with the provisions hereof and such notice shall constitute a valid tender of delivery.

**12. Force Majeure.** Seller shall not be liable for any default or delay in the performance of any of its obligations hereunder if such default or delay is caused, directly or indirectly, by fire, flood, earthquake, extreme weather conditions, or other such occurrences; diseases and plagues; labor disputes, strikes or lockouts; wars (declared or undeclared), rebellions or revolutions in any country; riots or civil disorder; terrorist attacks; accidents or unavoidable casualties; interruptions of transportation or communications facilities or delays in transit or communication; supply shortages or the failure of any party to perform any commitment to Seller relative to the production or delivery of any equipment or material required by Seller to perform its obligations hereunder; laws, rulings, regulations, decisions or requirements, whether valid, invalid, formal or informal, of any government, tribunal or governmental agency, board or official; or any other cause, whether similar or dissimilar to those enumerated herein, beyond Seller's reasonable control. Seller shall notify Buyer of the happening of any such contingency within a reasonable period of time. If due to an excusable delay, performance cannot be completed within the original period for performance, the period for performance shall be extended for a reasonable period of time to allow for completion of performance; provided, however, that if Seller is unable to complete performance 3 months of the original period for performance, Seller shall be entitled, at its sole discretion, to cancel the order without further obligation or liability to Buyer.

**13. Intellectual property rights.** 13.1 Buyer commits himself to Seller to sell Products exclusively under the trademark(s) or sign(s) stated in the order or otherwise specified by Seller, without any modification or addition. 13.2 Buyer will immediately inform Seller in case any (alleged) infringement is found of the intellectual property rights (such as trademark, plant breeders' rights (PBR), patent rights and copyrights) of Seller or any legal entities/natural persons associated with it. Buyer will leave the handling of the infringement, including any court proceedings or settlement of the matter, fully to Seller. Furthermore, at the first request of Seller, Buyer will cooperate fully, in reasonableness, in the handling of the case. 13.3 In case of refusal, expiry, invalidation or revocation of any intellectual property right (including trademark, plant variety rights and copyrights) regarding any Product, Buyer is not entitled to refund of any sums or royalties already paid to Seller, or to any other form of damages. 13.4 As long as an agreement is effective between the parties, Buyer will not bring any case against the validity of any intellectual property right of Seller or any legal entities/natural persons associated with it, in respect of any Product or packaging, nor will he give any support to any other person to do so, neither directly nor indirectly.

**14. Mutants.** 14.1 If Buyer identifies a "Mutant" (i.e. any variation, sport or other genetic and/or morphologic modification found in or generated from plant material of a Product, regardless whether it has come about spontaneously or artificially in (the plant material of) a Product), he shall inform Seller of this immediately in writing. Furthermore Buyer will inform Seller immediately in writing of any Mutant of the Products of Seller the existence of which becomes known to him as long as material of the Product in question is present in its company/ parcels. 14.2 At the first written request of the plant variety right owner, Buyer will submit test material of the Mutant to the plant variety right owner within a period of two weeks following receipt of such request. Moreover Buyer will transfer the property of all the plant material of the Mutant to Seller at the first written request of Seller. Next, Seller will substitute said plant material, free of charge, for plant material of the Products which the agreement relates to. 14.3 Also if this does not already result from the applicable plant variety regulations, all rights in a Mutant are owned by Seller and/or must be assigned to Seller and therefore Buyer always needs the permission of Seller to a) produce or multiply (propagate); b) condition for the sake of propagation; c) offer for sale; d) sell or market in any other way; e) export f) import; or g) store for one of the purposes stated above in a) to f), a Mutant. 14.4 Buyer shall also need the explicit approval of Seller referred to paragraph 3 of this section for varieties which have been essentially derived from a Product and for varieties which cannot be distinguished from a Product. 14.5 In the event that Buyer claims to have found a Mutant and this later proves to be incorrect, Buyer will be liable for all the damages and expenses incurred by Seller as a result thereof. Furthermore, Buyer will in said event indemnify Seller from any third-party claim relating to the use and/or commercialisation of (plant material of) the alleged Mutant.

**15. Non-propagation.** 15.1 Buyer may not use the Products for further production and/or reproduction of propagating material. Therefore, self-propagation and / or taking tip cuttings, as well as the unlicensed sale and transfer of rooted or unrooted cuttings to any other company or individual, is strictly prohibited, unless explicitly agreed otherwise in writing between Seller and Buyer. 15.2 If Buyer resells the Products to a third party, Buyer shall further prohibit any subsequent purchaser from further production or reproduction of the propagating material. Buyer's agreement with the third party will identify Seller as an intended beneficiary of the prohibition on production or reproduction. 15.3 Buyer must allow Seller, or Seller's designee, direct access to its business, including and in particular the greenhouses of its business, so that Seller can carry out or have carried out inspections to determine whether Buyer is in compliance with the prohibition mentioned herein or any other obligation pursuant to the agreement. "Business" in this article shall also mean any business activities that are carried out by a third party on behalf of Buyer. 15.4 Without prejudice to any remedies at law available to Seller (or the breeder) for any infringement by Buyer or by the third party Buyer resold any of the Products to of any PBR or Trade Mark applicable to the Product, Buyer shall immediately compensate Seller equal to the greater of liquidated damages or four times the value of the royalty of the Product which has been propagated or reproduced in breach of the agreement between Seller and Buyer. 15.5 In the event that the Buyer or the third party Buyer resold any of the Products to, has breached the propagated in breach of this clause, without prejudice to any remedies for infringement of the PBR or Trade Mark, Seller or its designees may enter any premises or land owned or under control of the Buyer or the third party Buyer resold any of the Products to and remove or destroy any or all of the unauthorized propagated plant material and no compensation shall be payable to the Buyer or the third party Buyer resold any of the Products to for such removal or destruction.

**16. Miscellaneous.** (f) **Limitations on Assignment.** Buyer shall not assign all or any portion of its rights hereunder, or delegate or subcontract all or any portion of its obligations hereunder, without the prior written consent of Seller. (g) **Waiver.** No failure on the part of Seller to exercise, and no delay by Seller in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by Seller preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver or assent by Seller to any breach of or default in these Terms and Conditions shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof. (h) **Governing Law and Jurisdiction.** This document and all amendments, modifications, alterations or supplements hereto, and all rights of the parties hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, without regard to its principles of conflicts of law. All disputes arising out of or in connection with these Terms and Conditions, or in respect of any legal relationship associated with or derived from these Terms and Conditions, shall be referred exclusively to the jurisdiction of the competent court in Naperville, Illinois. (i) **Headings.** The headings describing the contents of particular paragraphs are inserted only for convenience and shall not be construed as a part hereof or as a limitation on or enlargement of the scope of any of the terms or provisions contained herein. (j) **Entire Agreement.** These Terms and Conditions supersede all prior discussions and agreements between the parties with respect to the subject matter hereof, and contains the sole and entire agreement between the parties with respect to the matters covered hereby. By way of illustration and not by way of limitation, all orders submitted by Buyer shall be deemed to incorporate without exception all of the Terms and Conditions of Sale contained herein notwithstanding any additional or contrary terms and conditions contained therein. Unless Seller shall expressly advise Buyer to the contrary in writing apart from the provisions of such order, no acknowledgment by Seller of or reference by Seller to or performance by Seller under any such order form shall be deemed to be an acceptance by Seller of any terms or conditions contained therein which are additional to or contrary to the Terms and Conditions of Sale contained herein. The Terms and Condition of Sale contained herein may not be modified or amended except by an instrument in writing signed by one of Seller's duly authorized officers.