

TERMS AND CONDITIONS

1. PAYMENT: Buyer shall pay the agreed price for the plant material in full within ___ days of the date of Seller's invoice or ___ days of freight invoice, whichever is earlier. Interest will be charged on overdue balances at ___% per month (___% per annum).

2. LIMITED WARRANTY: Seller warrants that the plant materials described in this Contract are of the variety and cultivar represented; however, Buyer acknowledges there will be some normal and anticipated levels of instability in the cultivars of some varieties. Seller warrants that the plant materials are free from visible injurious insects and visible plant diseases at the time of delivery. Seller further warrants that the plant materials will be alive at the time of delivery and grow for a period of one (1) year under normal conditions when properly planted and standard horticultural practices are followed.

3. DISCLAIMER OF WARRANTIES: NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND APPLY TO THE PLANT MATERIALS WHICH ARE THE SUBJECT OF THIS AGREEMENT, EXCEPT FOR THE LIMITED WARRANTY SET FORTH HEREIN. ALL PLANT MATERIAL IS SOLD "AS IS" AND "WITH ALL FAULTS." OTHER THAN THE FOREGOING LIMITED WARRANTY, SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BECAUSE THE PRODUCTIVITY OF FRUIT TREES IS AFFECTED BY HORTICULTURAL PRACTICES AND ENVIRONMENTAL INFLUENCES BEYOND THE CONTROL OF THE SELLER, SELLER DISCLAIMS ANY AND ALL WARRANTIES OF PRODUCTIVITY INCLUDING BOTH TONNAGE AND QUALITY. PRIOR EXHIBITION OF A SAMPLE PACKOUT, BLOCK OR ORCHARD SHALL NOT CREATE AN EXPRESS OR IMPLIED WARRANTY THAT THE PLANT MATERIAL BEING SOLD WILL CONFORM TO THE SAMPLE PACKOUT, BLOCK OR ORCHARD. UNLESS THE PLANT MATERIALS ARE SOLD AS "CERTIFIED VIRUS INDEXED" SELLER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE PLANT MATERIALS ARE FREE FROM NON-VISIBLE PLANT DISEASES, VIRUSES, INSECTS OR OTHER LATENT DEFECTS. BUYER AGREES TO ASSUME THOSE RISKS.

4. CLAIMS: Any claims concerning plant materials must be submitted by Buyer to Seller in writing within the following periods after receipt of such plant materials by Buyer.

4.1 Within ___ days of delivery: Claims for visible defects affecting the plant material and/or deviations thereof from the agreed specifications (including storages and size of plants).

4.2 By ___ following the date of delivery: Claims for mortality on bare root trees. Seller shall have no liability for losses due to Buyer's negligence, improper care, freezing, unreasonable use or abuse.

4.3 Within three (3) years from the date of delivery, any and all other claims for breach of this Contract, specifically including but not limited to claims for errors in variety and cultivar.

4.4 If Buyer fails to submit a claim within the above-mentioned time frames, the Buyer agrees that those claims are waived.

5. LIMITATION OF REMEDIES: BUYER'S SOLE AND EXCLUSIVE REMEDIES SHALL BE LIMITED TO EITHER THE REPLACEMENT OF THE PLANT MATERIAL OR A REFUND OF THE PURCHASE PRICE OF THE PLANT MATERIAL, AT THE BUYER'S OPTION. THESE EXCLUSIVE REMEDIES SHALL COVER ANY CLAIMS BASED ON CONTRACT, STATUTE, COMMON LAW OR TORT. SELLER SHALL NOT BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ECONOMIC LOSS (INCLUDING LOST PROFITS), GROWING COSTS, INSPECTION, TRANSPORTATION, AND OTHER SERVICES AND EXPENSES RELATING TO THE STOCK SOLD. BUYER AGREES THAT RECOVERY OF ANY KIND SHALL NOT EXCEED THE PURCHASE PRICE OF THE SPECIFIED PLANT MATERIAL.

6. CONTINGENCIES: The Seller shall be relieved of any obligations under this Contract in the event the Seller is unable to perform due to causes or forces beyond the Seller's control and/or Acts of God, including but not limited to adverse weather conditions, drought, frost, hail, wind storms, disease, insects, fire, flood, labor shortages, crop failures, chemical damage, war, embargo, government regulations or restrictions, transportation problems, accidents, volcanic eruption, earthquake, or acts of terrorism. In the event that the plant materials ordered by the Buyer are not available to the Seller, for any reason, the Seller shall give the Buyer 30 day's written notice and provide the Buyer with the option of either substituting another product upon terms and conditions agreeable to both parties or rescinding the Contract. The plant material's unavailability to the Seller shall not be deemed a breach of this Agreement.

7. RISK OF LOSS OR DAMAGE: Buyer shall be responsible for all risk of loss or damage to the plant material from and after delivery to an independent carrier or Buyer, whichever delivery occurs first, and such loss shall not relieve Buyer from its obligations to Seller hereunder.

8. TAXES, FEES: Prices listed on this Agreement may not include all federal, state or local taxes which shall be paid by Buyer. In addition, Buyer shall pay all government inspection and certification fees, if any, for the plant material whether or not listed in this Agreement.

9. ENTIRE AGREEMENT: In addition to the Terms and Conditions set forth herein, the additional Terms and Conditions set forth on the official website of _____ (www._____.com) in effect as of the date of this Contract are incorporated herein by reference as though fully set forth in this document and together with the Terms and Conditions set forth herein comprise the complete and exclusive Agreement of the parties and in combination supersede all prior Agreements, oral or written, and all other communication between the parties specifically including but not limited to advertising claims.

10. GOVERNING LAW AND VENUE: This Agreement shall be governed by the laws of the State of Washington. Venue for any action between the parties shall be in _____ County, Washington.

11. COSTS AND ATTORNEY FEES: In the event any action is taken to enforce any of the terms of this Contract, the substantially prevailing party shall be entitled to an award of reasonable attorney fees and costs (which shall include the costs of expert witnesses if any).

12. ASSIGNMENT: The rights and benefits of this Contract to the Buyer may not be assigned or transferred by the Buyer (voluntarily or involuntarily) without the prior written consent of the Seller.

13. SEVERABILITY: If any of the terms or conditions of this Contract are deemed illegal, void or unenforceable for any reason, then that term or condition shall be severed from the Contract. All remaining terms and conditions shall remain in full force and effect.