

TERMS AND CONDITIONS OF SALE

1. **GENERAL.** These Terms and Conditions of Sale (this "Agreement") govern the sale to you (the "Buyer") of Seller's products identified in an order (the "Products") submitted to Seller by Buyer. This Agreement applies regardless of how you place an order.
2. **PRICES.** All prices exclude sales, use, license excise, and other taxes in respect of manufacture, sale or delivery, export or import duties, all of which shall be paid by Buyer unless a proper exemption certificate is furnished. Prices include shipping and handling charges, unless otherwise specified by Seller.
3. **PAYMENT TERMS.** Payment is due prior to shipment of Products. If Seller maintains a credit card on file for Buyer, Seller will charge such credit card prior to shipping Products.
4. **ORDER AND ACCEPTANCE.** No order is binding on Seller unless and until Seller ships the Products pertaining to such order. Any terms proposed by Buyer, which add to, vary from, or conflict with the terms of the Agreement shall be void, and the terms of the Agreement shall govern.
5. **DELIVERY AND DELAYS.** Unless otherwise specified, delivery will be FOB at the Products' shipment destination, and Buyer assumes all responsibility for risk of loss, or damage to, the Products furnished hereunder upon delivery of the Products to the destination by the common carrier. Products shall be deemed accepted by Buyer upon Buyer's receipt thereof. Seller shall have the right to select the means of transportation. Delivery dates quoted by Seller are approximate and subject to confirmation. Delay in delivery by Seller for any shipment shall not relieve Buyer of its obligation to accept remaining installment deliveries. Buyer must make claims for damage to Products, shortages or other errors in delivery in writing to Seller within 30 days after Buyer's receipt of shipment and failure to give such written notice shall constitute unqualified acceptance and a waiver of all such claims; provided that Buyer has first filed a claim for any damage or shortage of the Products with the common carrier as a primary source of relief, and provides evidence of such claim to Seller. Seller shall not be responsible for delays in delivery. If shipping is delayed or interrupted by Buyer directly or indirectly, Buyer shall pay Seller all additional charges resulting therefrom. Moreover, if as a result of such delay or interruption the Products are not shipped within 5 days after notification has been made to Buyer that it is ready for shipping, Seller may store the Products at Buyer's risk in a warehouse or upon Seller's premises, and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefore.
6. **CANCELLATION.** Seller may at any time, without notice, change payment terms, stop shipment or cancel unfilled orders. Purchase orders submitted by Buyer cannot be cancelled or rescheduled by Buyer.
7. **NO EXPORTS.** Buyer agrees that it will not export, directly or indirectly, any Products.
9. **WARRANTIES.** SELLER HEREBY PROVIDES AS THE SOLE WARRANTY TO BUYER THAT WHEN THE PRODUCTS LEFT SELLER'S FACILITY, THE PRODUCTS CONFORMED TO THE DESCRIPTIONS ON THE PRODUCTS' LABELS, WITHIN TOLERANCES ALLOWED BY LAW. EXCEPT AS SET FORTH HEREIN OR WITH RESPECT TO ELIGIBLE GROWERS PARTICIPATING IN A SOURCE PERFORMANCE PROMISE THAT MAY BE OFFERED FROM TIME TO TIME AND THEN SOLELY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF SUCH PERFORMANCE PROMISE, IT IS EXPRESSLY AGREED THAT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, EXPRESS, IMPLIED, OR STATUTORY, OR ANY AFFIRMATION OF FACT, OR PROMISES, BY SELLER WITH REFERENCE TO THE PRODUCTS.
10. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER OR ITS VENDORS OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE FOR ANTICIPATED OR ACTUAL LOST PROFITS, FOR DAMAGES ON ACCOUNT OF NEGLIGENCE, OR FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES. SELLER'S AGGREGATE LIABILITY FOR ANY CLAIM OF ANY KIND, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE SALE OF PRODUCTS TO BUYER SHALL BE LIMITED TO THE AMOUNT RECEIVED BY SELLER FROM BUYER FOR PRODUCTS IN THE 12 MONTHS PRECEDING ANY SUCH CLAIM.
11. **RESULTS MAY VARY.** The results obtained by any Buyer will depend on external factors. Buyer shall be solely responsible for determining the suitability and appropriateness of the use of the Products by Buyer in whatever conditions and/or purposes the Buyer uses the Products.
12. **RETURNS AND REFUNDS.**
 - a. **Returns.** Buyer may return unopened and in new condition Products to Seller for a refund of the purchase price (not including shipping or any other fees) for a period of 30-days from the date of receipt by Buyer. All returns of Products by Buyer shall be subject to, and in compliance with, all applicable federal, state and local laws, rules and regulations, including, but not limited to, the Environmental Protection Agency ("EPA"). All returns of Products and refunds shall be subject to the Seller's applicable policies and procedures, including, its returned goods policies. After such 30-day period Seller shall not accept returns of Products from Buyer for any reason.
 - b. 13. **COMPLIANCE.** Buyer represents and agrees that Buyer shall: (a) comply with all local, state and federal laws, rules and regulations, pertaining to the lawful possession, handling, use and disposition of Products, including, without limitation, regulations imposed by the EPA; (b) not take any actions in violation of any applicable legal requirements that could result in liability being imposed upon Seller; and (c) maintain all licenses, permits and/or registrations applicable to use and possession of Products.
14. **FORCE MAJEURE.** Seller will not be liable to Buyer for any delay or failure to deliver Products or otherwise perform under this Agreement due to strikes, riots, storms, fires, acts of nature, or any other similar causes beyond the reasonable control of Seller.
15. **CHOICE OF LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina, excluding that body of law known as choice of law, and shall be binding upon the parties hereto in the United States and worldwide. All disputes with respect to this Agreement shall be brought and heard either in the state and federal courts located in Raleigh, North Carolina. The parties to this Agreement each consent to the in personam jurisdiction and venue of such courts.
16. **GENERAL.** The failure of Seller to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this contract or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such rights. This Agreement and any acknowledgement or acceptance of a purchase order by Seller constitute the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof and supersede all proposals, oral or written, and all other communications between the parties relating to the subject matter herein.