

Sun Gro Horticulture General Terms and Conditions

1. APPLICABLE LAW-DEFINITIONS: The definitions of terms used, interpretation of this Order and the rights of all parties hereunder shall be construed under and governed by the substantive laws of the State of Washington without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods is inapplicable to these terms and the transaction(s) to which they apply. "Buyer" means the entity indicated on the front of this Order, on behalf of itself and for the benefit of its affiliates and subsidiaries. Whenever the Buyer is not the ultimate consumer of goods or services, all rights, benefits, warranties, indemnities and remedies conferred upon Buyer by this Order shall accrue to and are intended by the parties hereto for the express benefit of such client or user of the goods or services as intended beneficiaries of this Order. "Buyer's Premises" means any premises owned or leased by Buyer or its affiliates and any premises owned or leased by any intended beneficiaries of this Order. "Seller" means the person, firm or corporation to which this Order is addressed. "Goods" means services and/or those articles, materials, drawings, data, information and other property and all related activities including, without limitation, design, delivery, installation, inspection, testing, expediting, and maintenance specified or required to furnish items ordered by this Order which are provided by Seller to Buyer as an independent contractor and not as an employee or agent of Buyer.

2. PRICE AND TAXES: Any price specified on this form, unless otherwise expressly stated, includes all charges for packing, packaging and loading. Seller's prices are exclusive of any Federal, State or local sales, use or excise taxes levied upon, or measured by the sale, the sales price, or use of Goods supplied hereunder. Seller shall separately list on its original invoice any such tax collectible by Seller at the time of the sale which is lawfully applicable to any such Goods otherwise payable by Buyer and not subject to exemption or resale certificates.

3. CHANGES: Buyer may, by written change order, make any changes within the general scope of this Order, including additions to or deletions from the quantities originally ordered; or in the specifications or drawings; or in the time and place of delivery. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be negotiated. Any claim for adjustment hereunder must be asserted by Seller in writing within [5] days from the date when the change is ordered by Buyer. Nothing in this relieves Seller of its obligation to proceed with the Order as changed.

4. PACKING, SHIPPING & INVOICING INSTRUCTIONS: All Goods shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure lowest transportation costs unless otherwise specified. Packing slips shall be placed in each shipment. No packing or cartage shall be allowed except where specifically agreed upon. Itemized invoices shall be mailed in duplicate with shipping papers to Buyer at the address identified on face of this Order. Actual transportation charges shall be listed separately on the invoice. Such charges shall be substantiated with a copy of the freight bill. Any cash discount period shall be calculated from the date of receipt of correct invoice at Buyer's invoicing address. F.O.B. point and discount terms must be shown on all invoices. Payment terms are [30] days from the date a correct invoice is received unless otherwise specified on the front of this Order.

5. DELIVERY, TIME IS OF THE ESSENCE: Deliveries are to be made in the quantities and at the times specified in this Order. If Seller fails to make scheduled deliveries, Buyer may, without limiting its other rights or remedies, either, (a) direct expedited routing, and any excess costs incurred thereby shall be paid by Seller and subject to offset by Buyer; or (b) cancel the Order. Buyer shall not be liable for Seller's commitments or production arrangements in excess of the amount or in advance of the time necessary to meet this Order's delivery schedule. Goods which are delivered in advance of schedule may, at Buyer's option, either, (aa) be returned at Seller's expense for scheduled delivery; (bb) have payment therefor withheld by Buyer until the date that Goods are actually scheduled for delivery; or (cc) place Goods in storage for Seller's account and at Seller's expense until the scheduled delivery date(s). Delivery in accordance with this Order does not constitute acceptance by Buyer under this Order. Risk of loss of Goods shall be Seller's prior to passage of title and Buyer's after

passage of title. Title shall pass upon delivery of the Goods to Buyer and Buyer's acceptance thereof in accordance with this Order at the address identified on the face hereof.

6. INSPECTION: Buyer shall have the right to inspect and test or witness testing of Goods (a) at any time prior to shipment and (b) within a reasonable time after arrival at their designated destination. Goods shall not be deemed accepted until after final inspection. Buyer's making or failure to make any inspection of or payment for or acceptance of Goods shall not impair Buyer's right to reject nonconforming Goods, or to avail itself of any other remedies to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its substantiality or the ease of its discovery.

7. WARRANTIES: Seller warrants that all Goods (including all replacement Goods which Seller furnishes) shall be new, free from defects in material and workmanship (including damage due to unsatisfactory packaging by Seller), shall be in accordance with Seller's specifications, drawings and samples, and shall comply with all applicable laws, regulations or requirements. All Goods furnished hereunder shall be merchantable, suitable for their intended use, and to the extent such Goods are not manufactured pursuant to detailed designs furnished by Buyer, free from defects in design. All services shall be performed in a professional and workmanlike manner consistent with best industry practices. The period of this warranty shall be [12] months after delivery to Buyer or for such longer period as may be offered by Seller or Seller's suppliers. Notice of defect may be given to Seller at any time within the warranty period except that notice of latent defect or one concealed by fraud or such gross neglect as amounts to fraud may be given at any time. Seller shall, at Buyer's option, promptly either repair or replace defective Goods at its expense. The warranties of Seller and remedies of Buyer shall not be deemed to be exclusive, and together with any service warranties and guaranties, if any, shall survive acceptance and payment, and shall run to Buyer and any intended beneficiaries of this Order.

8. INDEMNIFICATION & INSURANCE: In the performance of this Order, Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) of any persons, or of any damage of any property arising out of acts or omissions of Seller, its agents, employees or subcontractors, and, except to the extent that any such injury or damage is due directly and solely to Buyer's negligence, Seller shall indemnify, defend and hold Buyer, its officers, employees, agents, contractors, intended beneficiaries, affiliates, and the officers, directors, employees of any corporate shareholder of Buyer harmless from any and all costs, losses, expense, damages, claims, suits or any liability whatsoever, including attorneys' fees, arising out of any act, omission or breach of warranty of Seller, its agents, employees or subcontractors, including strict liability. Seller shall maintain adequate insurance to support this indemnification obligation.

9. BUYER'S PROPERTY: Unless otherwise agreed in writing, any tangible property furnished to Seller by Buyer or developed in performance of Buyer's Order are the property of Buyer.

10. NO ASSIGNMENT: Seller is not authorized without prior written consent of Buyer to assign this Order. Any such assignment of rights or duties hereunder, by operation of law or otherwise, shall be null and void.

11. NON-WAIVER: No course of dealing or failure of either party to strictly enforce any term, right or condition of this Order shall be construed as a waiver of such term, right or condition. Any waiver by Buyer shall only be in writing and shall waive no succeeding breach of a term, right or condition or the term, right or condition itself.

12. COMPLIANCE WITH LAW: Seller agrees and warrants that Seller and all Goods shall comply with all applicable permits and licenses and all requirements of applicable laws, orders, regulations and standards.

13. CONFIDENTIALITY: Seller shall treat this Order as confidential. Seller will not disclose any information about this Order to third parties, except to the extent necessary for Seller to fulfill the Order.

Our offer to purchase is conditioned on the terms set forth herein. Your confirmation or delivery shall indicate your acceptance of our terms without alteration or amendment, notwithstanding anything on your sales or shipping documents to the contrary. Any additional or different terms proposed by you are expressly rejected unless specifically accepted by us in writing.