

## TERMS AND CONDITIONS OF PURCHASE

Orchard & Vineyard Supply, LLC ("Buyer") under these Terms and Conditions of Purchase ("Terms"), agrees to purchase, and the seller identified in the purchase order referencing and incorporating these Terms ("Seller") agrees to sell the goods ("Goods") and/or provide the services ("Services") as described in each such purchase order issued by Buyer which references and incorporates these Terms, which includes any exhibit, document, drawing, specifications, and data referenced or incorporated by reference in each written or electronic purchase order (each, an "Order"), subject to the following:

**1. ACCEPTANCE.** By acceptance of the Order which references and incorporates these Terms, Seller accepts these Terms and agrees that these Terms shall be the exclusive terms governing Buyer's purchase of Goods and/or Services from Seller, pursuant to Orders issued by Buyer from time to time. Nothing in these Terms shall be construed to obligate Buyer to issue any Orders to Seller. Acceptance of the offers represented by each Order is expressly limited to the terms and conditions of the applicable Order and these Terms and Buyer rejects any and all additional, different, or inconsistent terms or conditions contained in or incorporated into any quotations, acknowledgements, invoices or any other business document or form (electronic or otherwise) that Seller provides to solicit the Order from Buyer or sends in response to the Order. There are no understandings or agreements relating to the subject matter of these Terms other than as set forth in these Terms and each Order issued by Buyer hereunder. Notwithstanding the foregoing, if the Order references an agreement in effect between Buyer and Seller, the terms of that agreement will apply with respect to the sale and purchase of Goods and/or the performance of Services under the Order, and these Terms will not apply. Seller shall be bound by each Order hereunder when it executes and returns the acknowledgement copy of an Order, when it otherwise indicates acceptance of an Order or when it ships any Goods and/or provides any Services ordered herein to Buyer or otherwise commences performance thereunder. For the avoidance of doubt, Goods shipped or Services commenced by Seller, without an acknowledgement of the Order, will be acceptance of the Order, including but not limited to the quantities, pricing, and delivery dates specified in such Order. Buyer's acceptance of Goods and/or Services shall not be construed as an acceptance of any terms and conditions contained in any other documentation and expressly excludes any of Seller's general terms and conditions of sale or any other similar document.

**2. PRICE AND PAYMENT TERMS.** The price of the Goods and/or Services is the price stated in the Order. Unless specifically otherwise set forth, all prices quoted in the Order are firm and shall not be increased without Buyer's written consent and no additional charges of any type shall be added including, but not limited to, any charges for insurance, shipping, taxes, storage, packing and crating unless authorized in writing by Buyer. Seller will give Buyer the benefit of any price reductions available or in effect at the actual time of shipment and/or performance. Terms of payment, unless otherwise expressly agreed in writing, are as set forth on the Order. Except as otherwise provided herein or in the Order, Invoices shall be emailed to AP@OVS.com immediately after shipment of Goods or rendering of Service is complete. Delays in receiving invoices, errors, or omissions on invoices or lack of supporting documentation required by these Terms or the Order, or as reasonably requested by Buyer, will be cause for postponing the start of the payment terms until the correct information is received. Buyer will not be responsible for charges on invoices received more than 120 days after the rendering of Service is complete or shipment of the Goods unless indicated otherwise in a written agreement between Buyer and Seller. Buyer may withhold disputed amounts under the Order until the dispute is resolved, and Buyer may offset any amounts Seller owes Buyer. Unless otherwise specified on the face of the Order, payment terms are 45 days from the end of the month in which Buyer receives acceptable Goods and/or Services or a correct invoice, whichever is later.

**3. TERMINATION; CANCELLATION.** These Terms shall remain in effect for as long as there are any outstanding or unperformed Orders, unless otherwise terminated in accordance with these Terms. In the event of termination under this Section, Seller shall immediately stop all work under each Order, and shall immediately cause any of its suppliers or subcontractors to cease such work. Buyer may terminate these Terms, an Order, or any part thereof, for cause immediately, and without liability, upon notice to Seller. Cause includes Seller's default or non-compliance with any term or condition of these Terms or any Order, late delivery, delivery of defective or non-conforming Goods and/or Services, cessation of the conduct of Seller's business, failure of Seller to pay its debts generally as such debts become due, commencement of any proceeding under the bankruptcy code or insolvency laws by or against Seller, appointment of a receiver for Seller or a substantial portion of its business or assets, or an assignment for the benefit of Seller's creditors. In the event of termination for

cause, Buyer shall not be liable to Seller for any amount, and, notwithstanding anything to the contrary in these Terms (including the limitations set forth in Section 10), Seller shall be liable to Buyer for any and all damages sustained by such termination including, without limitation, at Buyer's option, direct, indirect, incidental and consequential damages, costs (including attorneys' and other professionals' fees and costs), expenses and losses. Seller may not cancel or modify any Order in whole or in part, without Buyer's written consent. Before Seller delivers Goods or performs Services, Buyer may make changes to the Order, including but not limited to (1) method of delivery; (2) place of delivery, (3) schedule of delivery, and the (5) quantities of delivery. If Buyer or Seller can demonstrate that such change will impact Seller's ability to timely deliver Goods or perform Services, Buyer and Seller will negotiate an equitable adjustment to the delivery schedule for such Goods or the performance schedule for such Services, as applicable. Buyer may cancel an Order at any time with respect to any Goods not yet delivered or Services not yet performed by notifying Seller. After Buyer notifies Seller of such cancellation, Seller will take all reasonable steps to minimize costs due to Buyer's cancellation. As Seller's exclusive remedy for cancellation of an Order without cause, Buyer will pay Seller for Seller's unavoidable costs incurred before receiving notice of cancellation (less any savings realized from Buyer's cancellation or related mitigation efforts) that Seller can document to Buyer's reasonable satisfaction. Upon termination or cancellation of an Order, Seller shall provide any transition assistance that may be reasonably requested by Buyer.

**4. DELIVERY / TITLE / RISK OF LOSS.** Except as otherwise provided herein or in the Order, title to Goods and risk of loss thereof, or damage thereto, shall pass to Buyer at the f.o.b. destination identified by Buyer. Seller shall deliver the Goods and/or provide the Services on the date specified in the applicable Order (the "Delivery Date"). Except as otherwise provided in the Order, delivery and/or performance shall be at the location shown on the face of the Order. Time is of the essence and if delivery of Goods and/or performance of the Services is not completed by the Delivery Date, Buyer reserves the right, without liability and in addition to its other rights and remedies, to terminate the applicable Order by notice to Seller effective as to Goods not yet shipped and/or Services not yet performed and to purchase substitute Goods and/or alternative Services elsewhere and charge Seller with any additional expenses, costs and loss incurred as a result. Seller shall promptly notify Buyer in writing if the Goods and/or provision of the Services will be delayed, indicating the cause and extent of the delay, but this shall not relieve Seller of its obligation to deliver and/or perform as required by these Terms unless otherwise instructed by Buyer in writing. If, in order to meet the Delivery Date it becomes necessary for Seller to ship by a more expensive way than specified in the Order, increased transportation costs shall be paid by Seller unless the necessity for such rerouting or expedited handling has been caused solely and exclusively by Buyer. Except as otherwise set forth in the Order, in the event of delivery of Goods by Seller direct to Buyer's end customers ("drop-shippments"), (a) where Buyer's preferred carrier is engaged at Buyer's sole discretion, title to such Goods and risk of loss thereof, or damage thereto, shall pass to Buyer f.o.b. Seller's facility; and (b) where Seller's preferred carrier is engaged, title to such Goods and risk of loss thereof, or damage thereto, shall pass to Buyer f.o.b. destination identified by Buyer. All Goods delivered by Seller pursuant to Section 4(b) above via drop-shipment require a signed proof of delivery from an authorized representative of the Buyer's end customer. This proof of delivery must be emailed to Buyer's primary contact set forth on the Order. Buyer will not be obligated to pay for any such Goods until it receives a proof of delivery for such drop-shippments, in a form reasonably acceptable to Buyer.

**5. INSPECTION AND REJECTION.** Receipt of any Goods and/or Services or payment for any Goods and/or Services will not constitute acceptance of any Goods and/or Services hereunder. At any time, Buyer may reject any Goods and/or Services which are of inferior quality or workmanship, not in compliance with these Terms or the Order, shipped and/or provided contrary to instructions, not in the quantities specified, which fail to conform to an applicable warranty, which are missing appropriate documentation, or otherwise do not conform to these Terms or the Order or that violate any applicable law. In addition to other rights and remedies available to Buyer, Goods so rejected may, at Buyer's option, be returned to Seller for reimbursement (including freight charges), credit, refund or replacement, or held by Buyer for pickup by Seller, all at Seller's expense and risk. Buyer may charge Seller any expenses incurred in unpacking, examining, repacking, storing and reshipping any Goods so rejected. Nothing contained in these Terms relieves Seller, in any way, from the obligation of testing, inspection, and quality control of Goods and/or Services.

**6. CONFIDENTIALITY.** All non-public, confidential or proprietary information of Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with these Terms and the Order is confidential, solely for the use of performing these Terms and the Order and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

**7. WARRANTY.** Seller warrants to Buyer, Buyer's successors, assigns, customers and users of the Goods, that: (a) Seller has good title to any and all Goods supplied hereunder and has the right to transfer title of said Goods to Buyer free and clear of any and all liens and encumbrances; (b) all Services shall be performed in a professional and workmanlike manner, in accordance with these Terms, the Order, and with applicable laws; (c) all Goods shall conform to all Buyer-approved drawings, samples, specifications and appropriate standards and all other requirements of these Terms and the Order, and all technical and/or functional requirements, features, dimensions, capacity, performance, and other standards as provided by Buyer; (d) all Goods (including their component parts) will be new (and not counterfeit), and traceable back to the original manufacturer; (e) all Goods will conform to any statements made on the containers or labels or advertisements for such Goods, and any Goods will be adequately contained, packaged, marked and labeled; (f) Goods supplied hereunder will be of merchantable quality; (g) if Seller knows or has reason to know the particular purpose for which Buyer intends to use the Goods, Goods supplied hereunder shall be fit for the particular use intended, (h) Goods supplied hereunder shall be free from defects, whether patent or latent, in material and workmanship; (i) Goods and Services, or Buyer's or any third party's receipt or use thereof, shall not infringe or misappropriate the intellectual or proprietary rights of any third party; (j) Seller shall, in the performance of its obligations hereunder, comply with all, and shall not violate any, applicable laws, rules, or regulations; and (k) be produced at a facility approved in advance by Buyer. The foregoing warranties shall survive acceptance, testing, inspection, or use of the Goods and/or Services by Buyer, and shall be cumulative and in addition to any warranties of additional scope given to Buyer by Seller and/or provided by law or in equity. Seller shall replace or correct defective Goods and/or Services promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. Alternatively, if Buyer elects not to do so, or in the event of failure of Seller to correct defects in or replace nonconforming Goods and/or Services promptly, Buyer may make such corrections or replace such Goods and/or Services, and in either case may engage third parties to do so, and charge Seller for the cost incurred by Buyer in doing so.

**8. INTELLECTUAL PROPERTY.** Seller represents and warrants that it has the right to grant to Buyer any right or license applicable to the Goods and/or Services. If the Goods and/or Services allegedly violate the intellectual property rights of any third party and/or sale and/or use thereof is enjoined, Seller shall, at Buyer's election, either (1) procure for Buyer the right to continue using same; (2) replace the same with non-infringing Goods and/or Services; or (3) modify the same so that it becomes non-infringing. Any Goods and/or Services which are capable of copyright protection made, designed or developed for Buyer pursuant to any Order shall be a "work made for hire." Seller hereby grants and assigns to Buyer and its successors and assigns any and all inventions, discoveries, computer programs, software, data, technologies, designs, innovations and improvements and related patents, copyrights, trademarks and other industrial and intellectual property rights and applications therefor made or conceived by Seller or its agents or employees in connection with the performance of any Order.

**9. INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD BUYER, AND ITS OFFICERS, DIRECTORS, MANAGERS, PARTNERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, LIABILITIES, DAMAGES, DEMANDS, LAWSUITS, CAUSES OF ACTION, PENALTIES, FINES, ADMINISTRATIVE LAW ACTIONS AND ORDERS, REASONABLE EXPENSES (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES) AND COSTS OF EVERY KIND AND CHARACTER (COLLECTIVELY, "CLAIMS/LIABILITIES") ARISING OUT OF OR

RELATING TO: (i) THE GOODS OR SERVICES; (ii) ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF SELLER; (iii) SELLER'S BREACH OF ITS OBLIGATIONS HEREIN; (iv) ANY CLAIM THAT THE GOODS OR SERVICES, OR BUYER'S USE OR RECEIPT THEREOF, INFRINGE OR MISAPPROPRIATE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; AND (v) ANY INJURY OR DEATH TO ANY PERSONS OR DAMAGE TO PROPERTY RESULTING FROM THE GOODS OR SERVICES.

**10. LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR PUNITIVE DAMAGES OR "COSTS OF COVER" ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR ANY ORDER, INCLUDING WITHOUT LIMITATION ANY DAMAGES ARISING OUT OF ANY MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, ERRORS, DEFECTS, LOSS OF DATA, LOSS OF PROFITS, LOSS OF BUSINESS, OR ANTICIPATORY PROFITS, REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH DAMAGES WERE MADE KNOWN OR WAS FORESEEABLE. THE MAXIMUM AGGREGATE LIABILITY OF BUYER AND ITS AFFILIATES TO SELLER AND ITS AFFILIATES, UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, ARISING OUT OF OR RELATING TO THESE TERMS AND THE ORDER, WILL NOT EXCEED THE LESSER OF: (I) TOTAL FEES PAID BY BUYER TO SELLER FOR THE GOODS OR SERVICES UNDER AN ORDER FROM WHICH THE CLAIM AROSE DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM; OR (II) THE POLICY LIMITS OF ANY COMMERCIAL GENERAL LIABILITY INSURANCE HELD BY BUYER. THE DAMAGE LIMITATIONS PROVIDED IN THESE TERMS AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE SELLER'S SOLE REMEDY (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN). THESE LIMITATIONS ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE.

**11. OWNERSHIP.** Unless otherwise agreed to in writing, all property of any description furnished to Seller by Buyer or unconditionally appropriated to an Order, including but not limited to designs, tools, patterns, drawings, and equipment, or any replacement thereof, or any materials affixed or attached thereto, shall be and remain the property of Buyer and shall be used only in fulfilling such Order and for no other purpose and shall not be duplicated or disclosed to others. Such furnishing of Buyer's property shall not be construed as granting any rights whatsoever, express or implied, to any such property to Seller, or to any intellectual property rights therein. Seller shall maintain such property in good working order and free from all liens or encumbrances. Upon completion or termination of the applicable Order, or upon termination of these Terms, all such property shall be returned to Buyer in good condition, ordinary wear and tear excepted.

**12. INSURANCE.** During the provision of Goods and/or Services under these Terms and the Order, Seller shall, at its own expense, maintain and carry in full force and effect, (i) commercial general liability insurance (including product liability/completed operations liability) on an occurrence basis in a sum no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and excess coverage at \$5,000,000; (ii) commercial automobile liability insurance with limits no less than \$1,000,000; and (iii) worker's compensation with limits no less than the minimum amount required by applicable law. All policies hereunder shall be held with financially sound and reputable insurers. Upon execution of the Order, and at any time upon Buyer's request, Seller shall provide Buyer with a certificate or insurance from Seller's insurer evidencing such coverage. The insurance coverage described herein shall: (a) name Buyer as an additional insured; (b) be primary and not contributory in relation to any policies in which Buyer is named or an additional insured; and (c) shall require Seller's insurer(s) to waive all rights of subrogation against Buyer.

Whenever Seller shall, by virtue hereof, have in its possession property of Buyer, Seller shall be deemed as insurer thereof and shall be responsible for its safe return to Buyer. If Seller is to perform any Services for Buyer on any premises owned or controlled by Buyer or elsewhere, Seller agrees to: (1) keep such premises and work free and clear of all mechanic's liens, and furnish to Buyer proper affidavits and/or waivers certifying thereto; and (2) perform such Services at Seller's sole risk prior to its written acceptance by Buyer, and replace at Seller's sole expense all property of Buyer damaged or destroyed by any cause whatsoever.

All shipments of Goods shall be insured for full value of Goods therein. This insurance shall include the full value of any materials furnished by Buyer whether

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or not these materials have been altered by Seller. Seller accepts full responsibility for financial reimbursement to Buyer for all Goods and materials lost or damaged and not insured.

**13. FORCE MAJEURE.** Buyer shall not be liable for damages under these Terms or the Order for a delay or failure in its performance under these Terms or the Order as a result of causes beyond its reasonable control, including any law, order, regulation, direction, or request of any government having or claiming to have jurisdiction over Buyer or its subcontractors; failure or delay of transportation; insurrection, riots, national emergencies, pandemics, epidemics, quarantine restrictions, war, acts of public enemies, strikes, labor disputes, or inability to obtain necessary labor, supply chain disruptions; fires, floods or other catastrophes; cyber attacks or any other interruptions, loss, or malfunctions of utilities, communications or computer (software or hardware) services; acts of God, acts of omissions of Seller or any causes beyond the reasonable control of Buyer. Upon the giving of prompt written notice to Seller of any such causes of a delay or failure in its performance of any obligation under these Terms or the Order, the time of performance by Buyer shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause.

**14. EQUAL OPPORTUNITY; COMPLIANCE WITH LAW.** Seller shall comply with, to the extent applicable hereto (a) all provisions of 41 CFR 60-1.4, the Equal Employment Opportunity Clause referred to in Executive Order 11246, as amended; (b) all provisions of 41 CFR 60- 250, as amended pertaining to Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era where the value of goods or services furnished hereunder exceeds \$10,000; (c) all provisions of 41 CFR 60-741 as amended pertaining to Affirmative Action for Handicapped Workers where the value of goods or services furnished hereunder exceeds \$2,500; and (d) similar applicable requirements of any state, local or municipal law. Seller shall perform its obligations under these Terms and the Order in compliance with all applicable statutes, laws, regulations, rules, ordinances, consents, approvals, and any other requirement of any governmental or quasi-governmental entity. Seller must also comply with all applicable U.S. and international import and export laws and regulations and must not import, export or re-export any technical data or Goods in contravention of U.S. or international law, including, but not limited to, those of United States Customs and Border Protection. Seller shall maintain in effect all licenses, permissions, authorizations, consents and permits that Seller needs to carry out its obligations under these Terms and the Order.

**15. MISCELLANEOUS.** These Terms and the Order: (a) may be modified only by a writing signed by each of the parties; (b) may be executed in several counterparts, each of which is deemed an original but all of which constitute one and the same instrument; (c) is governed by, and will be interpreted, construed and enforced in accordance with, the laws of the State of Oregon, without giving effect to its conflict of laws rules; (d) is binding upon, and will inure to the benefit of, the parties and their respective successors and permitted assigns; and (e) constitutes the sole and entire agreement of the parties with respect to the subject matter herein, and supersedes all prior and contemporaneous written or oral negotiations, understandings, agreements, representations, and warranties, with respect to the subject matter herein. In entering into these Terms and the Order, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained herein. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity. Seller may not directly or indirectly assign, transfer, or delegate any of or all of its rights or obligations under these Terms or the Order, voluntarily or involuntarily, including by change of control, merger (whether or not such party is the surviving entity), operation of law, or any other manner, without the prior written consent of Buyer. Buyer may freely assign or transfer any of its rights, obligations, or interests of these Terms and the Order without prior written consent of Seller. Any purported assignment or delegation in violation of this Section shall be null and void. Unless otherwise agreed by the parties, no assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder. Each party expressly consents to the exclusive jurisdiction of the federal, state and local courts serving Yamhill County, Oregon, to govern all disputes arising out of or relating to these Terms and the Order. Seller and Buyer each hereby waives any right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or relating to these Terms and the Order. Seller shall not make or publish any notice, advertisement, press release, or other communication with respect to the Order, its contents, or the Goods or Services without Buyer's prior written consent. Seller shall not use Buyer's name or logo in any of its advertising, client list, or sales promotional material without Buyer's prior written consent. The due performance or observance by a party of any of its obligations under these Terms and the Order

may be waived only by a writing signed by the party against whom enforcement of such waiver is sought, and any such waiver will be effective only to the extent specifically set forth in such writing. The waiver by a party of any breach or violation of any provision of these Terms or the Order will not operate as, or be construed to be, a waiver of any subsequent breach or violation hereof. Any provision of these Terms or the Order which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 15 of these Terms, as well as any other provision that, in order to give proper effect to its intent should survive the expiration or termination of these Terms or the Order, will survive such expiration or termination.