

Orchard and Vineyard Supply, LLC

TERMS AND CONDITIONS OF SALE

1. Products and Services. All sales of products and services (respectively, “**Products**” and “**Services**”) from Orchard and Vineyard Supply, LLC, a Delaware limited liability company (“**Seller**”) to you, the purchaser of such Products and Services, your affiliates, and the end user of the Products (collectively, “**Buyer**”) are subject to these Terms and Conditions of Sale (“**Terms**”), the sales order issued by Seller upon acceptance of the order for Products and/or Services, if any (“**Sales Order**”), and the Project Addendum, if any (collectively, the “**Agreement**”). In the event of a conflict between these Terms and any term of a Sales Order or a Project Addendum, precedence between such documents shall be determined in the following order: (i) the Sales Order shall be given the highest precedence; (ii) followed by the Project Addendum; and (iii) finally, these Terms. No order is binding upon Seller until received and accepted by an authorized representative of Seller. Seller accepts an order by issuing a Sales Order or by beginning to fulfill the order. NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, OR ANY MODIFICATIONS, CHANGES OR AMENDMENTS TO THE AGREEMENT SHALL BE BINDING ON SELLER, EXCEPT THOSE THAT AN AUTHORIZED REPRESENTATIVE OF SELLER EXPRESSLY AGREES TO IN WRITING. Any additional or different terms or conditions already or hereafter proposed by Buyer on any purchase order, in any other writing or communication, or otherwise, shall not apply unless otherwise acknowledged and accepted by the Seller in writing. The lack of specific objection by Seller to any additional, modifying or deleting provisions contained in any communications from Buyer shall not be construed either as a waiver of the terms of the Agreement or as an acceptance by Seller of any deviation from the terms of the Agreement.

2. Payment Terms. Buyer agrees to pay to Seller the amounts set forth in Seller’s invoice. Payment under each invoice is due by the 10th day of the month following the month in which the Products or Services were purchased, unless otherwise noted on the invoice. Any payments not made when due will accrue interest at the lower of a rate of 1.5% per month or at the highest rate permitted by applicable law. Buyer shall reimburse Seller for all reasonable expenses, including attorneys’ fees and court costs, incurred in enforcing the collection of any amount past due. In addition to all other remedies available under the Agreement or at law, Seller is entitled to suspend the delivery of any Products or the provision of any Services, under this Agreement or any other Agreement between the parties, if Buyer fails to pay any amount when due hereunder and such failure continues for 5 days following notice thereof.

3. Warranty. Seller makes no warranties of any kind with respect to Services. Products are manufactured by a third party, and Seller makes no warranties of any kind with respect to Products. Any warranties made or given by such third party manufacturers for the Products which are assignable by their terms are hereby assigned by Seller to Buyer. If any warranties made or given by such manufacturers are not assignable, Seller shall use reasonable commercial efforts to enable Buyer to receive the benefit from such warranties. **SELLER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, WITH RESPECT TO PRODUCTS AND/OR SERVICES, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHER WARRANTY OF QUALITY.**

4. Shipment; Delivery. Unless otherwise expressly agreed in a Sales Order, all Products are delivered Ex Works (INCOTERMS 2010) Seller’s facility. If Products are delivered Ex Works, Seller will provide notice, verbally or in writing, to Buyer that the Products are available for shipping at the delivery point (the “**Availability Notice**”). Buyer shall take delivery of the Products within a reasonable period of time from the date of the Seller’s Availability Notice. If, for any reason, Buyer fails to accept delivery of any Products within a reasonable period of time from the date of the Availability Notice, or if Seller is unable to deliver the Products within such period because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the

Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Seller, at its option, may (a) hold the Products until Buyer takes delivery; or (b) choose a carrier and ship the Products to Buyer, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, shipment and insurance). Seller will use reasonable efforts to comply with the delivery date(s) specified in the applicable Sales Order, but any such date is an estimate only, unless otherwise agreed in writing by the parties. Seller reserves the right to make delivery in installments. All such installments will be separately invoiced and paid for when due, without regard to subsequent deliveries. Title to and risk of loss of Products shall pass to Buyer when the Products are made available to Buyer’s carrier for shipment. Claims for shortages or other errors must be made in writing to Seller within 7 days of Buyer’s receipt of shipment and failure to give such notice shall constitute unqualified acceptance of the Products and a waiver of all such claims by Buyer. Buyer agrees that Buyer will accept Products regardless of any reasonable variation from the quantity or weight of Products ordered due to packaging/bundling in accordance with practices generally accepted in the industry.

5. Limitation of Liability. SELLER SHALL NOT BE RESPONSIBLE TO BUYER OR ANY THIRD PARTY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF WHATSOEVER NATURE, OR FOR ATTORNEYS’ FEES, LOSS OF USE, LOSS OF MARKET SHARE, OR LOST PROFITS HOWSOEVER THESE MAY BE CHARACTERIZED. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SELLER’S ENTIRE LIABILITY, AND BUYER’S EXCLUSIVE REMEDY, IN LAW AND EQUITY OR OTHERWISE WITH RESPECT TO ANY PRODUCTS PROVIDED OR SERVICES PERFORMED BY SELLER UNDER THIS AGREEMENT IS SOLELY LIMITED TO THE AMOUNT PAID BY BUYER TO SELLER FOR THE APPLICABLE PRODUCTS AND SERVICES.

6. Intellectual Property. All intellectual property rights in, or relating to, the Products, including any modifications, enhancements, improvements or derivative works therein or thereto, are owned by or licensed to Seller and nothing herein shall have the effect of transferring the ownership of such intellectual property rights to Buyer. If, by operation of law or otherwise, Buyer is deemed to own any such intellectual property rights, Buyer hereby assigns any and all such rights to Seller. In no event shall Buyer duplicate, attempt to duplicate, reverse engineer, disassemble or decompile the Products.

7. Termination. If Buyer fails to make a payment when due under the Agreement or breaches another obligation hereunder, Seller may immediately suspend performance under the Agreement and/or any order, and may immediately terminate all of its obligations under the Agreement and/or any order upon written notice to Buyer. On such termination, Buyer shall pay Seller for all Products provided and Services performed prior to and as of the effective date of termination, for reasonable expenses incurred by Seller for work-in-process up to and including the date of termination, and lost profits.

8. Entire Agreement. The Agreement is the entire Agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements.

9. Survival. Sections 2, 5, 6, and 7 will survive the expiration or earlier termination of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination.

PROJECT ADDENDUM

1. Services. Seller will provide the Services specified in the applicable Sales Order. Prior to commencing performance of Services, Buyer shall confirm the accuracy of the specifications and measurements relevant to the scope of the Services, as well as the quantity of Products to be supplied. Buyer shall be responsible for payment for all Products and Services supplied after providing such confirmation. If Buyer requests Services outside of these parameters, additional charges may apply. Seller shall have the right to access the site(s) at which the Services are performed, including the right of ingress and egress to and from public roads to such sites over Buyer's land. If no Services are designated in a Sales Order, the provisions of this Project Addendum relating to Services shall not apply.

2. Oversupply. Seller may elect to oversupply Products in order to prevent a shortfall. Unless otherwise set forth in a Sales Order, Buyer shall pay for all oversupplied Products in accordance with the terms of the Agreement. In the event that Seller oversupplies Products, all returns of such oversupplied Products will be handled in accordance with Supplier's current return policy.

3. Custom Products. Unless otherwise specified in the applicable Sales Order or otherwise authorized by the Seller in writing, non-stock or "built-to-suit" Products may not be returned, and purchases of such Products will not be refunded.

4. Prepayment. Seller may, at Seller's option, require Buyer to pay to Seller a prepayment prior to providing Products or rendering Services. If Seller requires such prepayment, Seller shall issue a Sales Order to Buyer for such prepayment promptly after acceptance of the applicable order, and such prepayment shall be due in accordance with the terms set forth in the Sales Order. Seller shall have no obligation to provide Products or perform Services until such prepayment is paid in full.

5. Delivery. Buyer agrees that Seller may, without liability to Seller, leave Products at the delivery site, regardless of whether Buyer or Buyer's employees or agents are available at the time of delivery.

6. Tariffs and Freight. If Products supplied under the applicable Sales Order are imported under a current agricultural tariff/duty exemption, Buyer shall certify in writing to Seller that such Products purchased will be used solely for agricultural purposes. If there are changes in tariffs, or newly imposed tariffs are enacted negating the agricultural exemption on Product purchases, which increase the cost of Products, or the delivery of Products, Buyer agrees to pay additional charges and Seller may unilaterally amend a Sales Order to include such additional charges. The price of Products included in a Sales Order are based on then-current ocean freight contracts. Variability in ocean freight may cause costs of ocean freight to increase substantially over contract rate, and Buyer agrees to pay all additional ocean freight charges imposed by Seller. Seller will provide supporting documentation upon request.

7. Return. Buyer shall have no right to return any Products or Services, unless such return is authorized by Seller in writing.

8. Insurance. Buyer shall be responsible for purchasing and maintaining liability insurance, including but not limited to bodily injury and property damage, and such other insurance as may reasonably be required by Seller, in amounts equal to those customarily maintained by similar companies in the same industry. Certificates of such insurance showing the coverage required hereunder shall be sent to Seller prior to the commencement of performance of Services. All policies of insurance shall name Seller as an additional insured. Any insurance payments made under such policies shall be paid to the party that suffered the insurable loss.

9. Indemnity. EXCEPT TO THE EXTENT CAUSED SOLELY BY SELLER'S NEGLIGENCE, BUYER SHALL INDEMNIFY AND HOLD HARMLESS SELLER, AND ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND OTHER COSTS OF DEFENDING ANY ACTION) THAT IT MAY SUSTAIN OR

INCUR AS A RESULT OF THE USE, OPERATION OR POSSESSION OF THE PRODUCTS AND/OR SERVICES BY BUYER OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES, THE NEGLIGENT OR WILLFUL ACT OR NEGLIGENT OR WILLFUL OMISSION OF BUYER OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OR THE ALTERATION OR MODIFICATION OF THE PRODUCTS AND/OR SERVICES OR THE USE OR COMBINATION OF THE PRODUCTS AND/OR SERVICES WITH OTHER PRODUCTS, DEVICES OR SERVICES BY BUYER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES.

10. Security Interest. As collateral security for the payment of the purchase price of the Products and/or Services, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products sold hereunder, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this section constitutes a purchase money security interest under the applicable Uniform Commercial Code.

11. Termination. If Buyer fails to make a payment when due under the Agreement or breaches another obligation thereunder, Seller may immediately suspend performance under the Agreement and/or any order, and may immediately terminate all of its obligations under the Agreement and/or any order upon written notice to Buyer. On such termination, Buyer shall pay Seller for all Products provided and Services performed prior to and as of the effective date of termination, for reasonable expenses incurred by Seller for work-in-process up to and including the date of termination, and lost profits.

12. Force Majeure. Seller will not be liable for any delay or failure in the performance under the Agreement, if such delay or failure is, directly or indirectly, caused by, or in any manner arises from, fires, floods, accidents, civil unrest, acts of God, war, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, any law, order, regulation, direction or request of any governmental authority having or claiming to have jurisdiction over Seller, insurrection, riots, national emergencies, terrorism, or any other causes beyond Seller's reasonable control.

13. Compliance with Law. In performing its obligations and exercising its rights under the Agreement, Buyer shall, at all times, act ethically and in compliance with all applicable laws of the United States and any jurisdiction in which Buyer is established or conducts operations relating to the Agreement, including (without limitation) any applicable laws in force from time to time regarding bribery, fraudulent acts, corrupt practices and/or money laundering.

14. Survival. Sections 9, 10 and 11 of this Project Addendum will survive the expiration or earlier termination of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination.