

TERMS AND CONDITIONS

Acceptance of Terms: These terms and conditions shall govern all orders from the Hermann Holtkamp Greenhouses, Inc., or Floremara, LLC for seeds, bulbs, plants, supplies and other materials ("merchandise") placed with Seller. All negotiations with salesmen or other agents of Seller are merged herein. Purchaser acknowledges that it has not relied on any representation not contained herein. No modification of these terms and conditions shall be effective unless in writing signed by Seller. Placement of the order and receipt of the Acknowledgment from seller shall constitute Purchaser's offer to purchase the merchandise on these terms and conditions. All orders and contracts are subject to acceptance or rejection by Seller at its offices in Nashville Tennessee and shall be deemed accepted upon shipment by Seller.

Limitation of Warranty: Seller warrants, to the extent required by law, that merchandise conforms to the description appearing in Seller's catalog and on container labels, within recognized tolerances. SELLER MAKES NO OTHER OR FURTHER WARRANTY, EXPRESS OR IMPLIED. ALL OTHER OR FURTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. Certain merchandise may be separately warranted by the manufacturer. Seller does not adopt or ratify any manufacturer warranties, express or implied, and Seller shall have no liability thereunder. Seller does not adopt or ratify any warranties, express or implied, made by Purchaser upon resale of the merchandise, and Seller shall have no liability thereunder. Purchaser agrees to defend, indemnify, and hold Seller harmless from and against any liability of any kind to any person arising out of any warranty, express or implied, made by Purchaser upon resale of the merchandise. Seller shall have no liability for breach of warranty unless notice of any breach is given within a reasonable time, not to exceed thirty (30) days, after such breach is or should have been discovered. Any action for breach of warranty must be commenced within one year after the cause of action has accrued.

Limitation of Remedy: PURCHASER'S SOLE AND EXCLUSIVE REMEDY SHALL BE REFUND OF THE PURCHASE PRICE. SELLER'S LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PRODUCTS LIABILITY, OR ANY OTHER THEORY OF LIABILITY, IS LIMITED TO THE AMOUNT OF THE PURCHASE PRICE. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

Confirmation and Governing Law: The law of the State of Tennessee shall govern the rights, duties, and obligations of the parties. Purchaser hereby submits to the jurisdiction of the courts of the State of Tennessee. In the event of litigation, the prevailing party shall be entitled to recover reasonable attorney's fees in addition to any other award.

Prices: All prices are subject to change without notice. The price in effect at time of shipment will prevail. Payment is due in accordance with terms specified on invoice. All payments shall be made in U.S. funds. In the event of default in the payment of any amount when due, and in addition to all other rights and remedies available to Seller, SELLER SHALL BE ENTITLED TO COLLECT A LATE CHARGE OF 1% PER MONTH (12% PER YEAR) OR THE MAXIMUM RATE ALLOWED BY LAW, WHICHEVER IS LESS, ON ALL AMOUNTS PAST DUE FROM THE DATE DUE UNTIL THE DATE PAID.

Inspection and Return Policy: Purchaser should inspect merchandise upon receipt. Seller shall have no liability for any defect unless notice is given promptly, not to exceed 48 hours after receipt of item. In cases of loss or damage due to transportation, Purchaser should obtain and forward an inspection report to Seller's customer service Department within fifteen (3) days of delivery. No merchandise conforming to the Purchaser's order may be returned without Seller's prior written authorization. Requests to return merchandise and any complaints or claims not arising under the Seller's warranty must be made within 48 hours after delivery. All returns must be in accordance with Seller's shipping instructions with freight paid by Purchaser. Returns of conforming merchandise are subject to a 25% restocking charge.

Delays, Shortages and Substitutions: Seller shall not be responsible for delays in delivery or for losses resulting from such delays due to unforeseen, supervening circumstances. Seller reserves the right to make partial shipment if full shipment is commercially impracticable. In the event of shortages, Seller may substitute such other, similar merchandise as is available.

Survival: If any provision of the terms and conditions of sale stated herein and on the face hereof shall for any reason be held prohibited by or invalid under applicable law, in whole or in part, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions hereof.

Protected Varieties: Varieties listed with the symbols PP# (Plant Patent Number), USPP or PAP (U.S. Patent Pending), PVPA (Plant Variety Protection Act Certificate issued), PVPAP (Plant Variety Protection Act Pending), BR (Breeder's Rights certificate issued) or BRP (Breeder's Rights Protection Pending) are protected by U.S. or foreign plant patents or plant variety protection laws. These varieties may not be reproduced without authorization. The breeder (or authorized representative) has the right to inspect customer's nurseries during normal business hours to assess compliance with the restrictions on use of protected varieties.

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