

## PRODUCT TERMS & CONDITIONS (Please Read Carefully)

Hort Americas

Product Terms & Conditions apply to any accepted offer or quotation between Hort Americas (“Seller”) and The Manufacturer (as “Manufacturer”) and the Customer(s) identified in the accepted offer for Products and/or services identified therein (collectively “Products”).

1. **Contract.** Your order or offer confirmation or acceptance, the light plan (as approved or modified), all attachments, addenda and amendments, together with these Product Terms and Conditions, shall constitute a legally binding contract between the Customer(s) identified therein and with Seller and Manufacturer (collectively the “Contract”).

2. **Offer/Acceptance.** By signing or otherwise indicating acceptance of an Order of Offer referencing these Product Terms and Conditions or by accepting delivery of the Products referenced therein, Customer is accepting and agreeing to be bound by this Contract. If you (Customer agent) are entering into this Contract on behalf of a company or other legal entity, you represent to Seller that you have the authority to bind that entity to the terms and conditions of this Contract. If Customer has any prior contract or agreement with Hort Americas governing the Products, the terms in that Contract will supersede any contrary terms. An order or offer from Seller sets forth those Products offered to Customer, the type, number and costs as well as other information relating to Customer’s order. Unless otherwise set forth on an Offer, each unaccepted Offer expires thirty (30) calendar days following the date the Offer is created. If Customer accepts an Offer following the expiration date, Seller reserves the right to accept or reject the acceptance within 5 business days. Failure of Hort America to timely accept or reject will be deemed a rejection.

3. **No Side Agreements.** Customer hereby waives, and Seller/Manufacturer reject, any additional or inconsistent terms that may be included on Customer’s purchase orders, vendor forms, supplier registration portal(s), or otherwise submitted or referenced by Customer that differ or alter any Offer, unless specifically accepted by Seller. This Contract may be amended or supplemented only by a writing that refers to this Contract and that is signed by both parties. The failure or delay by a party to require performance of any provision of this Contract does not constitute a waiver.

4. **Confidentiality.** Customer agrees that all quotes, pricing, and terms of the Contracts are “confidential.” Customer agrees not to disclose or publish to third parties the terms or pricing set forth in the Contract or any prior

quote or offer. Customer agrees to treat all confidential information with the same level of protection against disclosure as Customer treats its own trade secrets.

5. **Products.** Customer is responsible for determining which Products best meet its needs. Seller and Manufacturer reserve the right to discontinue developing, producing, selling or distributing any Product and to modify, replace or change Products at its discretion at any time. All or part of the Products distributed under this Contract may have components manufactured by others.

6. **Manufacturer’s Warranty Only.** The only warranties for the Products are those provided by the Manufacturer. Seller makes no additional warranty, express or implied, and disclaims all such warranties. Seller is selling the Products “as is,” without any additional warranty of any kind, whether express, implied or statutory, including, without limitation, warranties of merchantability, fitness for a particular purpose, title, non-infringement of intellectual property rights, accuracy of information, content or results.

7. **Compliance with Laws.** Customer will and will cause any person or entity acting on its behalf to fully comply with all applicable governmental, legal, regulatory and professional requirements, including but not limited to the Foreign Corrupt Practices Act. If any Product is subject to the customs and export control laws and regulations of the United States and any country in which the Product is received or used, Customer will comply with these laws, regulations and rules in the performance of its obligations under this Contract. Further, Customer will not provide, ship or export the Product to blocked, prohibited or restricted individuals and entities as required by the U.S. Department of Treasury Office of Foreign Assets Control (“OFAC”). Customer will not knowingly do business with criminal or terrorist organizations, or other people or groups, that are likely to use the Product for purposes that are illegal or adverse to the interests of the United States Government. Customer will provide Seller with assurances and official documents that it may request periodically to verify Customer’s compliance with this Contract.

8. **Data Protection.** If Customer’s use of the Product will involve processing or handling of personal data, Customer will comply with applicable laws and regulations. Additionally, Customer will employ adequate technical and organizational security measures to protect personal data, if any is collected, against a personal data breach.

9. **Late Payment.** The due date for payment is calculated from the date the invoice is received at the location designated by Customer as shown on the accepted Offer.

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Past due amounts will bear interest at the lower of: 1.5% per month or the highest rate allowed by applicable law.

10. **Notices.** Except for routine operational correspondence, all notices and demands, required or permitted to be given under this Contract must be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when: (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally-recognized private carrier (e.g., Federal Express, DHL, etc.); or (d) sent by email with confirmation of transmission. Notices will be sent to Customer at the address set forth in the Contract (or if none is specified, the address to which invoices are sent).

11. **FORCE MAJEURE.** Except for Customer's obligation to make payment under this Contract, neither party will be liable for any failure or delay in fulfilling or performing any term of this Contract when and to the extent the failure or delay is caused by or results from acts or events beyond that party's reasonable control, including, without limitation: acts of God; fire; water damage; natural disaster (including earthquakes, storms, and floods); power or utility outages; strikes; war, military action, act of terrorism; medical crisis, pandemic or epidemic; a total or partial loss, malfunction, or failure of communications network; a change in law or regulation; acts of government authorities; or an order or judgment of a court (not arising out of breach by the party of this Contract). The party suffering a force majeure event will promptly give notice to the other party, stating the period of time the occurrence is expected to continue.

12. **No Assignment.** Customer shall not transfer or assign this Contract or any of its rights or obligations, whether in whole or in part, without the prior written consent of Seller.

13. **Severability.** If a provision of this Contract is invalid or unenforceable, that provision will be deemed restated so as to be enforceable to the maximum extent allowed consistent with original intent of the invalid provision.

14. **Shipping/Risk of Loss.** All shipments of Product are F.O.B. Customer's dock, and risk of loss will pass at that time. Seller shall be solely responsible for insuring all loads against damage or loss.

15. **Taxes/Ag Exemption** Customer **represents and warrants** to Seller and Manufacturer that the sale contemplated by the Contract is tax exempt or exempt from sales or use/excise taxes under applicable federal, state and/or local agricultural or other exemption laws or regulations. Customer shall be solely responsible for claiming and obtaining all applicable sales and excise tax exemptions, and/or paying and reporting all taxes (of any kind) applicable to the transactions in the Contract. CUSTOMER HEREBY INDEMNIFIES AND HOLDS SELLER and MANUFACTURER HARMLESS OF ANY FROM ANY FAILURE OF CUSTOMER TO TIMELY AND FULLY CLAIM ANY EXEMPTION FROM TAXES AND/OR FAILURE TO REPORT AND PAY ANY AND ALL FEDERAL, STATE and/or LOCAL TAXES APPLICABLE TO THE SALES CONTEMPLATED BY THIS CONTRACT.

16. **Waiver of Lost Profits.** Customer agrees to, and hereby, waive its right to seek or recover from Seller or Manufacturers for consequential, incidental, punitive, exemplary or statutory damages, including a specific waiver as to loss of profits, delay damages and loss of business damages.

17. **GOVERNING LAW.** The Contract is governed by and interpreted for any and all purposes in accordance with the laws of the State of Texas and the Contract will be deemed to have been negotiated in English. Customer agrees that exclusive jurisdiction for any lawsuit involving enforcement of the Contract shall be in the State of Texas; provided however, disputes concerning any Product warranty shall be governed as provided by the Product warranty or in the State in which the Product is manufactured.

18. **JURY WAIVER/ATTORNEY FEES.** ALL PARTIES VOLUNTARILY and INTENTIONALLY WAIVE THEIR RIGHT TO A JURY TRIAL AS TO ANY AND ALL DISPUTE BETWEEN THEM. The Parties further stipulate and agree that the prevailing party in any litigation shall recover its reasonable attorney fees, but such award shall not exceed \$50,000.