

TERMS AND CONDITIONS

1. Introduction.

THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

THESE TERMS REQUIRE THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

BY PLACING AN ORDER FOR PRODUCTS FROM OUR SITE, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THESE TERMS, AND YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS. YOU AFFIRM THAT IF YOU PLACE AN ORDER ON BEHALF OF AN ORGANIZATION OR COMPANY, YOU HAVE THE LEGAL AUTHORITY TO BIND ANY SUCH ORGANIZATION OR COMPANY TO THESE TERMS.

YOU MAY NOT ORDER OR OBTAIN PRODUCTS FROM OUR SITE IF YOU (A) DO NOT AGREE TO THESE TERMS, (B) ARE NOT THE OLDER OF (i) AT LEAST 18 YEARS OF AGE OR (ii) LEGAL AGE TO FORM A BINDING CONTRACT, OR (C) ARE PROHIBITED FROM ACCESSING OR USING THIS SITE OR ANY OF ITS CONTENTS, GOODS OR SERVICES BY APPLICABLE LAW.

2. Applicability.

(a) These terms and conditions (these “**Terms**”) are the only terms which govern the sale of the products (“**Products**”) by Baucom’s Nursery Company d/b/a Plants Direct to You and its affiliates (“**Seller**”, “**we**”, “**us**”, “**our**”, or variations thereof) to the buyer identified on the accompanying invoice (the “**Sales Confirmation**”) (“**Buyer**”, “**you**”, or variations thereof). These Terms are an integral part of the terms of use that apply generally to the use of our Site. These Terms are subject to change by without prior written notice at any time, in our sole discretion. The latest version of these Terms will be posted on our website (the “**Site**”), and you should review these Terms prior to purchasing any Products that are available through this Site. You should also carefully review our Privacy Policy before placing an order for products or services through this Site (see Section 12).

(b) The Sales Confirmation and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its order on such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions (if any) and does not serve to modify or amend these Terms.

3. Order Acceptance and Cancellation. You agree that your order is an offer to buy, under this Agreement, all Products listed in your order. All orders must be accepted by us or we will not be obligated to sell the Products to you. We may choose not to accept orders at our sole discretion, even after we send you a confirmation email with your order number and details of the items you have ordered.

4. Price.

(a) Buyer shall purchase the Products from Seller at the price(s) (the “**Price**”) set forth in the Sales Confirmation. All Prices posted on this Site are subject to change without notice. Price increases will only apply to orders placed after such changes.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided that, Buyer shall not be responsible

for any taxes imposed on, or with respect to, Seller's income, gross receipts, personnel or real or personal property or other assets.

5. Payment Terms. Terms of payment are within our sole discretion and payment must be received by us before our acceptance of an order. We accept Visa, Mastercard, Discover and Paypal for all purchases. You represent and warrant that (i) the credit card information you supply to us is true, correct and complete, (ii) you are duly authorized to use such credit card for the purchase, (iii) charges incurred by you will be honored by your credit card company, and (iv) you will pay charges incurred by you at the posted prices, including shipping and handling charges and all applicable taxes, if any, regardless of the amount quoted on the Site at the time of your order.

5. Shipments: Delivery; Title and Risk of Loss.

(a) We will arrange for shipment of the Products to you by method specified on the Site. Please check the individual product page for specific delivery options (if any). You will pay all shipping and handling charges specified during the ordering process. Shipping and handling charges are reimbursement for the costs we incur in the processing, handling, packing, shipping, and delivery of your order.

(b) Title and risk of loss pass to you upon delivery. Shipping and delivery dates are estimates only and cannot be guaranteed. We are not liable for any delays in shipments.

6. Inspection and Rejection of Nonconforming Products.

(a) Buyer shall inspect the Products within three (3) days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Non-Conforming Products during the Inspection Period and furnishes such written evidence or other document as required by Seller. "**Nonconforming Products**" means only the following: (i) a Product shipped is different than that identified in Buyer's Sales Confirmation; or (ii) a Product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion: (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Seller's designated address. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products to Buyer's designated address.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Products. Except as provided under Section 7(b) and Section 8, all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased under this Agreement to Seller.

7. Returns. Please contact our customer service department at sales@plantsdirecttoyou.com for more information regarding whether a particular Product may be returned and the terms and conditions applicable to the return of a Product (if returnable). You are responsible for all shipping and handling on returned items. You bear the risk of loss during shipment. Seller retains the right to permit or disallow a return in its sole discretion. WE OFFER NO REFUNDS ON ANY PRODUCTS DESIGNATED ON THIS SITE AS NON-RETURNABLE.

8. Disclaimer of Warranties. **ALL PRODUCTS OFFERED ON THIS SITE ARE SOLD "AS IS", AND BUYER AGREES THAT THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, GIVEN BEYOND THE DESCRIPTION ON THE FACE OF SELLER'S SALES CONFIRMATION. SELLER HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF**

FITNESS FOR A PARTICULAR PURPOSE. IT IS THE SOLE RESPONSIBILITY OF BUYER TO ASCERTAIN THE SUITABILITY OF THE PRODUCTS FOR ANY USE. BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DESCRIPTION, DURABILITY OR SUITABILITY OF THE PRODUCTS WHICH BUYER HAS PURCHASED FROM SELLER. SELLER FURTHER MAKES NO WARRANTIES FOR ANY PATENT OR LATENT DEFECTS INHERENT IN THE RAW MATERIALS USED TO MANUFACTURE THE PRODUCTS.

9. Indemnification. Buyer hereby agrees to indemnify, defend, and hold harmless Seller, its affiliates, members, managers, officers, directors, shareholders, employees, agents, and successors and assigns (collectively, the “**Indemnified Parties**”) from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including without limitation reasonable attorneys’ fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers (collectively, “**Losses**”), incurred by the Indemnified Parties arising out of or relating to any claim of Buyer or a third party arising out of or occurring in connection with: (a) the Products purchased or otherwise obtained from Seller; (b) Buyer’s negligence or more culpable acts or omissions or breach of this Agreement; and/or (c) Buyer’s violation of applicable law. If Buyer is purchasing the Products for the purpose of resale or distribution to third parties, including without limitation, end users of the Products, or hereafter resells and/or distributes the Products to third parties, Buyer hereby agrees to indemnify, defend, and hold harmless the Indemnified Parties from and against all Losses incurred by the Indemnified Parties, arising out of or relating to any claim of Buyer or a third party arising out of or occurring in connection with: (x) Buyer’s acts or omission as a reseller or distributor of the Products; (y) Buyer’s advertisements, representations, covenants, and promises that warrant performance of the Products or any other matter with regard to the Products; and/or (z) any failure of Buyer or its personnel to comply with applicable law. Buyer shall not enter into any settlement without Seller’s or the applicable Indemnified Party’s prior written consent.

10. Limitation of Liability.

(a) **IN NO EVENT SHALL THE INDEMNIFIED PARTIES BE LIABLE TO BUYER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOSS OF USE, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE REGARDLESS OF: (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE; (D) WHETHER SELLER FAILED TO GIVE A MORE SPECIFIC WARNING WITH RESPECT TO THE INDENTITY, NATURE, OR DANGERS OF ANY PRODUCTS OR RELATED PRODUCTS AND SUCH FAILURE RESULTED IN SUCH DAMAGES, OR (E) ANY MANUFACTURING OR DESIGN DEFECT RESULTING IN SUCH DAMAGES.**

(b) **IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.**

(c) The limitation of liability set forth above shall: (i) only apply to the extent permitted by law and (ii) not apply to liability resulting from our gross negligence or willful misconduct.

11. Goods Not for Resale or Export. You represent and warrant that you are buying products or services from the Site for your own personal or household use only, and not for resale or export. You further represent and warrant that all purchases are intended for final delivery to locations within the United States.

12. Privacy. We respect your privacy and are committed to protecting it. Our *Privacy Policy*, plantsdirecttoyou.com, governs the processing of all personal data collected from you in connection with your purchase of products or services through the Site.

13. Force Majeure. Seller will not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in our performance under this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

14. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice of law or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of North Carolina.

15. Dispute Resolution and Binding Arbitration.

(a) **BUYER AND SELLER HEREBY AGREE TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.**

(b) **ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN BUYER AND SELLER ARISING FROM OR RELATING IN ANY WAY TO BUYER'S PURCHASE OF PRODUCTS OR SERVICES THROUGH THE SITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION TO BE HELD IN CHARLOTTE, NORTH CAROLINA.**

(c) The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Consumer Arbitration Rules (the "AAA Rules") then in effect, except as modified by this Section 15. The Federal Arbitration Act will govern the interpretation and enforcement of this Section 15.

(d) The arbitrator will have sole and exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction.

(e) Buyer agrees to an arbitration on an individual basis. In any dispute, **NEITHER BUYER NOR SELLER WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.** The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

(f) If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

16. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without Seller's prior written consent. Any purported assignment or delegation in violation of this

Section 16 is null and void. No assignment or delegation relieves you of any of your obligations under this Agreement.

17. No Waivers. The failure by us to enforce any right or provision of this Agreement will not constitute a waiver of future enforcement of that right or provision. The waiver of any right or provision will be effective only if in writing and signed by a duly authorized representative of Seller.

18. No Third-Party Beneficiaries. Except with regard to the rights of the Indemnified Parties hereunder, this Agreement are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19. Notices.

(a) *Notices To You.* We may provide any notice to you under this Agreement by: (i) sending a message to the email address you provide; (ii) mail to your mailing address provided on the Sales Confirmation (or any subsequent mailing address you provide to us); or (iii) posting to this Site. Notices sent by us to you will be effective immediately. It is your responsibility to keep your email address and mailing address current.

(b) *Notices to Us.* To give us notice under this Agreement, you must contact us as follows: (i) by email to sales@plantsdirecttoyou.com (or any subseor) (ii) by personal delivery, overnight courier, or registered or certified mail to our address provided on the Sales Confirmation (or any subsequent mailing address we provide to you). Notices provided by email or personal delivery will be effective immediately, notices provided by overnight courier will be effective one (1) business day after they are sent, and notices provided by registered or certified mail will be effective three (3) business days after they are sent.

20. Electronic Commerce. Buyer may not share any password, access code, or similar credential issued to it by Seller, and Seller reserves the right to suspend or revoke any such credential. Buyer is solely responsible for ensuring the security and integrity of its ordering process. Any information provided by Seller via the Site or electronic communication: (a) is subject to correction or change without notice, and (b) is provided for the sole use of Buyer for purposes of facilitating individual transactions involving the purchase and sale of Products. Buyer agrees that it will not rely upon any such information for any purpose other than making individual purchases and will not seek to assert such information against Seller for any other purpose. Seller may issue electronic Sales Confirmation for any purchases of Products.

21. Severability. If any provision of this Agreement is invalid, illegal, void or unenforceable, then that provision will be deemed severed from this Agreement and will not affect the validity or enforceability of the remaining provisions of this Agreement.

[End of Terms and Conditions]