



Terms & Conditions

Formation of Contract

The terms set forth below are the sole terms for the sale of goods and services by C. M. Brown Nurseries, Inc. unless specified in writing. Any contract made for the sale of goods and service by C. M. Brown Nurseries, Inc. is expressly conditional on the Buyer's assent to the terms stated herein. Notification of objection to any additional or inconsistent terms is hereby given to the Buyer.

Price

All prices are F.O.B. Perry, Ohio. Prices are subject to change without notice.

Minimum Order

Our minimum order for shipment is \$1500. Minimum order for pickup is \$500.

Credit Accounts

Orders are accepted on a **PRE-PAY BASIS** only, unless a written confidential credit application has been submitted to and approved by C. M. Brown Nurseries, Inc. Please allow 4-6 weeks for processing. Our payment terms are net 30 days for customers with approved credit. A service charge of 1.5% per month (18% per year) will be applied to past due accounts. Payment on account is applied to accrued interest first. Cancelled orders may be charged a processing and or restocking fee. **Shipping and packaging** charges are not included in the plant price and will be added to the invoice at the time of shipment for credit accounts. When actual shipping costs exceed our estimate, additional charges will be incurred.

Cash in Advance Accounts, Visa, and MasterCard Accounts

We do not ship COD. All Buyers who do not have pre-established credit accounts pay by Cash, VISA, or MasterCard. Orders booked for future delivery are considered confirmed only after a 25% deposit has been received by us. Full payment must be received 14 days before shipment. Future orders without a deposit or without timely full payment will be cancelled. Cancelled orders may be charged a processing and or restocking fee. We accept Company Check, Visa, and Mastercard. **Shipping and Packaging** charges are not included in the plant price. Shipping and packaging will be charged at the time of shipment. When actual shipping costs exceed our estimate, additional charges will be incurred.

Returned Check

A \$45.00 charge will be assessed for returned checks.

Acceptance & Claims

All plants become the Buyers property at the time of delivery to the carrier. Upon Buyers receipt of shipment, Buyer shall immediately inspect the goods. Unless Buyer provides Seller with written notice of any claim, goods shall be deemed finally inspected, checked and accepted by Buyer. Plant claims that are covered by our limited warranty must be submitted in writing within ten (10) days of shipment.

Shipping

The goods shall be shipped at your expense, F.O.B our facility, unless Seller agrees to other arrangements in advance and in writing. Shortages, defects, errors and other non-conformities in shipments must be reported to Seller within ten (10) days of your receipt of the goods. If goods are damaged in transit, You shall file the appropriate claim with the carrier and promptly notify Seller of such claim. You agree to cooperate with Seller in all such claims and related proceedings against the carrier.

Inspection

All plant material is inspected by the Ohio Department of Agriculture and certified.

Seller's Limited Warranty.

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, Seller warrants that, at the time of delivery, the goods will be free from defects in material and workmanship. Seller's obligation under the Limited Warranty shall be limited to replacement of the goods, at Sellers discretion at no charge to you. Seller's Limited Warranty does not cover, and Seller expressly disclaims any warranty with respect to, any defect, failure, deficiency, error or non-conformity in the goods or the acts or omissions of Seller which is either (a) not reported to Seller within the applicable claim period set forth below, or (b) due to defective or deficient requirements, needs or specifications provided by you to Seller, or (c) due to misapplication, modification, misuse or abuse of the goods, or improper storage, handling or maintenance of the goods. Seller warrants that all plants shall be true to name. We warranty our plants to be in good living condition at the time of shipment.

Exclusion and Disclaimer of All Other Warranties

SELLER'S LIMITED WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS CONTRACT. THE PROPER SELECTION, APPLICATION, SUITABILITY AND USE OF THE GOODS ARE YOUR SOLE RESPONSIBILITY. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGE CAUSED BY ANY WEATHER CONDITIONS ONCE PLANT MATERIAL IS DELIVERED TO CARRIER. BUYER ASSUMES ALL RISKS AND RESPONSIBILITY OF TRANSPORTATION, GROWTH, PLANTING, LIFE OF STOCK, OR ANY OTHER MATTER ON ANY PLANTS WE SELL. UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR ANY AMOUNT GREATER THAN THE PURCHASE PRICE OF THE PLANTS.

Limitation of Remedies

EXCEPT AS OTHERWISE PROVIDED IN SELLER'S LIMITED WARRANTY, YOU WAIVE ALL OTHER CLAIMS AGAINST SELLER, AND SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE OF THE GOODS HEREUNDER, INCLUDING BUT NOT LIMITED TO (A) DAMAGES FOR LOSS OF USE, INCOME OR PROFIT, (B) LOSSES SUSTAINED AS A RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, INCLUDING THIRD PARTIES, AND (C) DAMAGES TO PROPERTY.

Notice of Claim.

All claims by you shall be deemed waived unless made in writing and received by seller within Ten (10) days of either your receipt of the goods, or when you reasonably should have discovered the claim, provided that no claim shall be accepted later than 3 months from the date of your receipt of the goods.

Choice of Law

This contract shall be governed by, and construed according to, the laws of State of Ohio, including the Uniform Commercial Code as in effect on the date hereof (except as the provisions thereof are modified herein). All actions arising out of this contract, the transactions referenced herein, or the Goods, shall be brought in the Court of Common Pleas, Lake County, Ohio, or in the United States District Court for the Northern District of Ohio, Eastern Division.

Cancellations

Cancelled orders may be charged a processing and or restocking fee. No cancellations are permitted on **custom grown** plant material after the material is in process. We will stop the product from being delivered, to save delivery costs, but we will invoice for the product and/or a processing and restocking fee.

Restocking Fee

We will invoice a fee for 20% of the value of the order.