



## Patented Varieties Protect Your Investment!

To help our customers navigate through the confusing world of intellectual property, Fall Creek is implementing a new verification system for our customers' records.

### On Every Order Acknowledgment and Invoice

#### Look For:

- License Numbers for each item that can be verified to Patent IP Owner's websites and catalogs.
- Proof of itemized royalty payment amounts.

#### What To Do:

- Keep your Fall Creek invoice as an official record of your purchase.
- Use this invoice when asked by packers, shippers, marketers, retailers and real estate agents to demonstrate that your plants on your property and the fruit being sold from these plants is in compliance with the license agreement and have come from legally propagated plant material.

#### Ask For:

- Official documentation for any patented plant material you purchase.
- If seller is not able to provide the information needed, contact the IP owner for verification.

If the purchaser named on the front of this document ("Purchaser") has executed a credit agreement ("Credit Agreement") with Fall Creek Farm & Nursery, Inc. ("Fall Creek"), the terms of this sale are subject to the Credit Agreement, this sale is expressly conditioned on acceptance of the terms and conditions of the Credit Agreement, and Fall Creek and the Purchaser agree that the terms contained in the Credit Agreement are the controlling terms relating to this transaction.

### Terms & Conditions

This document constitutes Fall Creek's offer to sell the goods identified on the opposite page to the Purchaser (the "Goods"), Fall Creek's sales are commercial sales and are expressly conditioned upon the terms and conditions set forth below and any terms and conditions set forth on Fall Creek's invoice(s) and order acknowledgment(s) pertaining to the Goods, if any (cumulatively these terms and conditions and Fall Creek's order acknowledgement(s) and invoice(s) pertaining to the Goods will be referred to as the "Agreement"). Fall Creek and Purchaser agree that the terms contained in the Agreement are the sole terms relating to the sale of the Goods. Any additional or different terms contained in any of Purchaser's website, purchase orders, order commitments or other correspondence with Fall Creek are hereby rejected by Fall Creek.

The Agreement may not be amended or modified except by a written instrument executed by all of the parties. Fall Creek's failure to enforce any provision of this Agreement shall not be deemed a waiver of its rights. Fall Creek expressly reserves the right to revise these terms and conditions at any time without notice to Purchaser and Purchaser agrees that the terms in effect on the date of sale shall govern.

**Purchaser represents that:** (1) Purchaser is a validly existing entity in good standing in Purchaser's organizing jurisdiction; (2) Purchaser has full power and authority to enter into this Agreement; and (3) that the Agreement and all other documents between Purchaser and Fall Creek are binding on Purchaser in accordance with their terms. Purchaser shall indemnify and hold Fall Creek harmless against any loss, liability or expense, including attorney fees, for any breach of these representations.

Fall Creek warrants that the Goods sold will be as described in the Agreement (the "Warranty"). The Warranty shall not be construed as: (1) a warranty that the Goods are free from plant pests or defects; or (2) as a warranty or guarantee of plant growth or fruit production.

**EXCEPT AS PROVIDED FOR ABOVE, FALL CREEK MAKES NO EXPRESS OR IMPLIED WARRANTIES CONCERNING THE GOODS, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

Purchaser's exclusive remedy for any breach of the Warranty is, at Fall Creek's option, either: (1) replacement of the non-conforming Goods at Fall Creek's sole expense; or (2) a refund of a portion of the Purchase Price paid, provided that Purchaser notifies Fall Creek of such nonconformity in writing within ten days of delivery. Purchaser may be required to return any allegedly defective Goods to Fall Creek.

Under no circumstances, and regardless of the nature of or legal basis for any claim, including negligence, will Fall Creek be liable for any **SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES** of any kind, including but not limited to lost profits or revenue, increased expenses or reduced efficiency, loss of use of products or facilities, the cost or value of labor of any kind, damage to reputation, expenses of litigation or other disputes with third parties, administrative or management time or services, claims of Purchaser's customers or others, and the cost of efforts to mitigate any such damages. Under no circumstances will Fall Creek be liable for any emotional distress or similar damages.

In addition, Fall Creek shall not be liable to Purchaser on any claim or set of related claims for a total amount in excess of the price stated for the Goods alleged to be nonconforming, defective, or otherwise not provided in accordance with Fall Creek's obligations; and in any event Fall Creek's total aggregate liability to Purchaser or otherwise will not exceed the Purchase Price. The limitations in this section apply even if an exclusive remedy stated in this Agreement fails of its essential purpose.

Shipping and delivery dates are estimates only and are not guaranteed by Fall Creek. The availability of the Goods is subject to crop conditions and/or errors in count. Orders for Goods shall be subject to cancellation without liability by Fall Creek if the Goods are damaged or delivery is delayed by weather, disease, fire, natural disaster, riot, vandalism, terrorist act, governmental act, inability to obtain competent labor, disruption in transportation, or any other cause beyond Fall Creek's control.

All sales are F.O.B. Fall Creek's dock. Delivery occurs and title and risk of loss pass to

Purchaser when the Goods are made available to Purchaser or the contracted carrier at Fall Creek's dock ("Delivery"). Fall Creek is not responsible for loss, damage, or delay, after Delivery. Purchaser must deal directly with the contracted carrier for any damage occurring during transit. If Purchaser for any reason fails to promptly take Delivery of Goods which Fall Creek has notified Purchaser are ready for Delivery, Fall Creek may add reasonable storage and stocking costs to the stated price. Purchaser assumes all risk during such storage.

The purchase price is as stated on the Agreement (the "Purchase Price"). Amounts invoiced are not subject to any contingency, offsets, or hold-back. All stated prices are in U.S. dollars and do not include any sales, value added, inventory, use, or other charges, fees, or taxes, all of which are Purchaser's sole responsibility. Unless an earlier date is provided for in the order acknowledgement or invoice, payment in full of the Purchase Price is due on or before Delivery. A late charge of 1% per month (or partial month) will be assessed on any past due balance until paid in full.

If the Purchase Price is not received as provided for above, Purchaser is in default. If Purchaser fails to perform any other obligation stated in the Agreement, Purchaser is in default. Upon default, Fall Creek may, at its sole discretion: (a) declare the entire balance of the Purchase Price to be immediately due and payable; (b) cease performance until the default is cured; (c) require Purchaser to pay amounts in arrears and pre-pay any amount deemed reasonable to Fall Creek; (d) require Purchaser to post a bond or present a letter of credit to Fall Creek, in a form acceptable to Fall Creek and in a face amount of the Purchase Price; (e) terminate this Agreement; and (f) pursue any or all legal and equitable remedies available to Fall Creek. The aforementioned actions are cumulative and not exclusive.

If Fall Creek becomes reasonably concerned about Purchaser's ability or intent to fully and timely perform all of Purchaser's obligations, Fall Creek may demand reasonable assurances from Purchaser, in a form acceptable to Fall Creek. Fall Creek may suspend any further performance until such assurances or payment has been received.

A 25% deposit is required on all orders of commercial plant stock, and a 50% deposit is required for any custom growing agreement, the latter defined for purposes of this Agreement as any order of plants for which Fall Creek is legally or practically limited in its ability to sell to another customer. Deposits are due according to the payment schedule in the Agreement. If a deposit is not received when due, Fall Creek may terminate the order or any other agreement without notice to Purchaser.

Purchaser may not cancel any order or other agreement without Fall Creek's written consent. If Purchaser cancels an order or any other agreement without Fall Creek's written consent, Fall Creek will suffer damages that will be difficult to determine or ascertain with certainty, and Fall Creek may claim or retain any deposit as liquidated damages and not as a penalty. The parties intend that Purchaser's payment of the liquidated damages would serve to compensate Fall Creek for Purchaser's breach and are a reasonable estimate of Fall Creek's actual harm.

Oregon law governs the interpretation and enforcement of these terms and conditions, without regard to its conflict of laws provisions. The Convention of International Sale of Goods does not apply to this Agreement. If a dispute arises, Fall Creek, at its sole option, may elect to resolve the matter by binding arbitration, through and pursuant to the rules of Arbitration Services of Portland, and judgment on any such award may be entered in any court having jurisdiction. Unless Fall Creek elects a different venue, the exclusive venue for any litigation arising out of or relating to these terms and conditions shall be either the Lane County Circuit Court or the Federal District Court in Eugene, Oregon. Purchaser consents to jurisdiction in such courts. Any arbitration shall be conducted in Lane County, Oregon. The prevailing party in any litigation or arbitration shall be entitled to recover its reasonable attorneys' fees, at trial (or hearing) or on appeal.

If all or part of any provision of this Agreement, or the application of such provision to any person or circumstances, is invalid or unenforceable, the remaining provisions will not be affected and will be valid and enforceable to the fullest extent permitted by law. This Agreement constitutes the complete and exclusive statement of the agreement between Purchaser and Fall Creek and fully supersedes all prior agreements or negotiations, written or oral, including, but not limited to, any statements or representations made by Fall Creek's agents related to the quality or nature of the Goods.