

SALES TERMS AND CONDITIONS

I. GENERAL

The following Terms and Conditions (“Terms”) are applicable to all sales of plants and the like (the “Products”), produced by Vegetal I.D. Inc. (“Seller”), a Delaware corporation with offices located at 7939 Bank Street Rd., Batavia, New York 14020, and the purchase of Products by buyer (“Buyer / Client”) is expressly conditioned upon Buyer / Client’s consent to these Terms. No interlineations, deletions, modifications or amendments to these Terms shall be binding on Seller unless agreed to and accepted in writing by Seller.

II. PRODUCT QUOTATIONS

A. The quotations or tenders are noncommittal and non-binding in nature. No valid contract shall arise until a Purchase Order Confirmation or another form of written acknowledgment is issued by Seller to Buyer / Client. Buyer / Client acknowledges and agrees that the Terms shall supersede any and all terms of Buyer / Client and or any third parties in all phases of the contemplated transaction between the parties.

B. The weights, dimensions, capacities, performance ratings, characteristics and other data on Seller’s catalogs, prospectus, circulars, advertisements, and price lists are mentioned only as general information. They are only approximate and shall not bind Seller. Any necessary test or Product control examination and expenses will be agreed to in advance by the parties prior to delivery based on Seller’s standard testing conditions and objectives. Installation of the Products shall be at the sole expense and responsibility of Buyer / Client.

III. DELIVERY

Unless otherwise specified by the parties in writing, the Products are to be delivered “ex works”, at Seller’s place of business (as “ex-works”/ EXW is defined by Incoterms 2010 published by the International Chamber of Commerce). The method and agency of transportation and routing will be designated by Seller. Seller reserves the right to increase the shipping price between the date of the order and the date of delivery based on increased shipping costs, and upon Seller’s written notice, Buyer / Client will have the right to cancel the order with three (3) business days written notice to Seller, from the date of notification by Seller of such increase. Seller is not responsible for any damages to the Products in shipment, and Buyer / Client assumes all risks during shipment and thereafter.

IV. DELAYS IN DELIVERY

A. Seller shall not be responsible or liable for any delays or related consequences, or damages of any kind whatsoever, including consequential damages, where such delays are caused by circumstances and conditions beyond the Seller’s control including but not limited to, (a) fire, floods, hurricanes or other natural disaster or weather or environmental damage or loss; (b) differences with employees, strikes, or labor shortage; (c) accidents to or malfunctions of Seller’s or Seller’s subcontractors’ or suppliers’ equipment or facilities; (d) supplier or subcontractor delays, including any quantity or quality defects; (e) delays caused by an instrumentality of the United States Government or any government or any agency; (f) delays in transportation; (g) restriction imposed by any governmental regulation, whether valid or invalid; or other cause beyond the control of Seller; (h) any delays imposed by Buyer / Client or Buyer / Client’s agent(s). (i) or any conditions without the sole fault or negligence of Seller, or out of Seller’s control.

1. Delays caused by or due to Buyer /Client or Buyer / Client's agent(s): For any delay in delivery of Products caused by or due to Buyer / Client, or Buyer / Client's agent(s): the Buyer / Client must notify Seller in writing, no less than ten ("10") business days of such delay, before the scheduled or expected shipment date, so as to reasonably enable the Seller to take appropriate actions. Provided that Seller timely receives such written notification, Buyer / Client has up to two months to accept delivery without any additional charges. However, any time period exceeding the two months, the prices are subject to increase at Seller's discretion, and the Seller is entitled to maintenance charges for the Product(s).

2. Delays while in transit: Seller is not responsible or liable for any delays caused while Products are in transit.

3. Delays caused by Seller: Subject to the Force Majeure provision set forth below in Section XI., A delay of more than one month, during the applicable growing season , entitles the Buyer / Client to cancel the order. The Buyer / Client must notify Seller in writing, no less than five ("5") business days of cancellation from having been notified by Seller of the delay. In the event Buyer / Client does not notify Seller of such cancellation, Buyer / Client accepts delivery under the new terms, and will be responsible for all outstanding amounts and fees owed to Seller.

B. If Buyer / Client does not accept delivery of Products at the date specified in the order or later agreed to by Seller, the delivery of the Products shall nevertheless be deemed accepted by Buyer / Client who shall therefore pay for the Products delivered. The storage of the Products arranged by Seller will be at the risk and expense of Buyer / Client. Seller shall further be entitled, not to the exclusion of any other remedy for Buyer / Client's failure to take the products, to recover any expenses properly incurred in performing the contract and not covered by payments received for the Products delivered.

V. ACCEPTANCE OF PRODUCTS.

Before the second twenty five percent (25%) installment becomes due, Buyer / Client may accept Products either by reviewing of photographs or through a pre-arranged visit to Seller's nursery. Buyer / Client shall have two (2) days from viewing the Products, to notify Seller its acceptance. Buyer / Client may have the option to delay acceptance of Products for insufficient coverage i.e. less than forty percent (40%). Buyer / Client shall have two (2) days from viewing the Products, to notify Seller in writing, of such delay in acceptance. In the event of such delay, Buyer / Client and Seller shall cooperate in good faith to arrive at a mutual agreement on completing the transaction. Once products are accepted, Buyer / Client will not have the right to terminate the agreement to purchase Products.

VI. PAYMENT

A. Unless otherwise stated, Buyer / Client must pay to Seller and Seller must receive twenty five percent (25%) of the total payment amount, after the Purchase Order Confirmation is issued by Seller. Buyer must then pay and Seller must receive twenty five percent (25%) of the total payment amount at least five (5) business days prior to shipment. If Buyer / Client fails to make payment before shipment, Seller will retain Products for a maximum of sixty (60) days, for Buyer / Client, subject to maintenance charges. However, after sixty (60) days have lapsed, the transaction is deemed null and void, and the deposit of twenty five (percent 25%) forfeited by Buyer / Client,. The remaining Fifty percent (50%) will be due within thirty 30) days of the date of delivery. Seller at its discretion may refuse shipment of Products if payment is not received timely. If

the Buyer / Client has not paid In the event Seller feels insecure concerning payment by Buyer / Client, Seller reserves the right to require cash or letter of credit payment terms, otherwise payment may be made by any mode of payment acceptable to Seller. The price does not include any present or future Federal, State or Local property, sales, use, excise, license, gross receipts or other taxes or assessments which may be applicable to, imposed upon or result from this transaction or any services performed in connection with these Terms and/or the Products. Buyer / Client agrees to pay any such taxes or reimburse payment of such taxes by Seller.

B. In addition to all other rights and remedies to which Seller is entitled at law, in the event payment is not received when due, interest shall be due at the rate of two percent (2%), or the maximum permitted by law, on the unpaid portion of the invoice sum for each period of thirty (30) days or part thereof from the due date. Buyer / Client shall pay all of Seller's costs of collection of any amounts past due, including, but not limited to attorneys' fees, court costs, witness fees, travel and lodging, etc. Seller will be entitled to apply payments made by Buyer / Client first to pay those claims it deems appropriate, including interest, late charges, costs of collection, etc.

C. Buyer / Client, or its affiliates or assignees, will not be entitled to suspend its payment obligations to Seller, claim any right to compensation and/or to offset its payment obligations with any obligations of Seller to Buyer / Client, with such obligations being those set forth in these Terms Buyer / Client will not be entitled to terminate the contract with Seller if Buyer / Client is in default or in breach of its obligations. No warranties shall be valid, unless the Buyer / Client has paid in full all balances due.

VIII. LIMITED WARRANTY; LIMITED LIABILITY

A. Seller warrants that the Products covered by this contract shall conform in quality, origin and type to those agreed upon by the parties, and as set forth in the invoice(s). **THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER WARRANTIES, AND SPECIFICALLY THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.** Due to the agricultural and vegetative nature of the Products, performance of the Products once in Buyer / Client's possession are subject to the installation, care and up-keep of the Buyer / Client or Buyer / Client's customers, involving but not limited to such factors as environment, weather, agronomic, maintenance/ gardening conditions, techniques and practices.

B. The remedies of Buyer / Client set forth herein are exclusive, and the total liability of Seller with respect to these Terms, or the Products, parts or services furnished hereunder, in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical assistance covered by or furnished pursuant to these Terms, whether based on warranty, negligence, indemnity, strict liability or otherwise, will in no event exceed the purchase price of the Products upon which such liability is based. **SELLER WILL IN NO EVENT BE LIABLE TO BUYER / CLIENT, ANY SUCCESSORS IN INTEREST OR ANY BENEFICIARY OR ASSIGNEE OF THESE TERMS FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THESE TERMS OR ANY BREACH THEREOF, OR ANY DEFECT IN, OR FAILURE OF, OR MALFUNCTION OF THE PRODUCTS HEREUNDER,** whether based on goodwill, lost profits, interest, work stoppage, impairment of other goods, loss by reason of shutdown or non-operation, increased expenses of operation of equipment, lost of use of power system, cost of purchase of replacement power or claims of Buyer / Client for service interruption whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict

liability or otherwise. The maximum liability of Seller under any circumstances shall be the price actually paid by Buyer / Client to Seller for the Product that is proven to be defective.

IX. INTELLECTUAL PROPERTY RIGHTS

A. All intellectual property rights to, ownership of, and interest in all Products, trademarks, trade names, logos, distinctive marks, designs, and other materials created and/or made available by Seller hereunder or within the framework of the relationship between Buyer / Client and Seller are vested exclusively in Seller. All drawings and technical documents relating to the Products or its manufacture submitted by Seller, prior to or subsequent to the formation of the contract, shall remain the property of Seller. Buyer / Client shall not reproduce, transfer, grant, assign, license or use the Products, distinctive marks, and designs and other materials created and/or made available by Seller and/or otherwise act as maker of and/or party entitled to such rights, except in accordance with these Terms. Any of the foregoing materials, documents or other media provided by Seller to Buyer / Client shall not be used, copied, reproduced, transmitted or communicated to a third party without the advance written consent of Seller.

B. Buyer / Client shall not remove or alter indications concerning intellectual property rights and concerning the confidential nature of information from Products, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by Seller and Products delivered. Buyer / Client shall not alter, or have altered, modify, or have modified, adapted or otherwise reconfigured, the Products, services, programs, works, distinctive marks, inventions, designs, models and other materials created and/or made available by Seller.

X. CANCELLATION PRIVILEGES

A. In addition to all other rights and remedies to which Seller is entitled to at law, Seller may cancel any contract if Buyer / Client is in default of the payment of any obligations pursuant to or any contract between the parties, or if in the sole judgment of Seller, Buyer / Client's financial condition and responsibility has become materially impaired. In addition, Seller shall have the right to recover damages for nonperformance, and any unpaid installments due on account of this or any other contract between the parties shall become immediately due and payable. If Buyer / Client validly cancels the contract, Buyer / Client will be obliged to compensate Seller for any costs incurred by Seller in connection with making the offer and entering into the contract and the damage and/or loss arising from the cancellation, unless Buyer / Client's cancellation or postponement of the order is provided in writing to Seller fourteen (14) days prior to the anticipated delivery date of the Products.

B. Seller will be entitled to terminate the contract unilaterally with immediate effect, fully or in part and/or to suspend performance of its obligations under the contract with immediate effect if:

1. Buyer / Client has failed to fulfill one or more of its obligations under this or any other contract or sales terms;
2. Buyer / Client has suspended payments or has sought the protection of the Bankruptcy Courts;
3. A petition for the involuntary bankruptcy of Buyer / Client has been filed;

4. Buyer / Client's property on Seller's premises has been attached in execution;
5. A resolution for the dissolution and/or winding up of Buyer / Client has been adopted;
6. The enterprise operated by Buyer / Client has been fully or partly transferred to a third party without consent of Seller.

Seller will never be liable with respect to Buyer / Client for any damages arising from termination of the contract or from the suspension of obligations under the contract for the aforementioned reasons.

C. If the contract is terminated, performance of the contract already received by Buyer / Client and the payment obligations of Buyer / Client in connection with it will remain. The amounts invoiced by Seller for performance prior to or upon termination of the contract will be immediately due and payable after termination. Buyer / Client agrees to pay any of Seller's costs, damages, attorneys' fees and other expenses associated with Seller's termination of any contract with Buyer / Client pursuant to the terms of this section.

XI. FORCE MAJEURE

If Seller is temporarily unable to perform this Agreement because of Force Majeure, it will be entitled to suspend performance of the contract for as long as the Force Majeure lasts. Force Majeure shall include any and all conditions of weather and the environment causing delay in delivery of the Products. If Seller is permanently unable to perform any of its obligations to Buyer / Client because of Force Majeure, it will be entitled to cancel the specific order with immediate defect and without any damages whatsoever. Buyer / Client agrees to indemnify, defend and hold Seller harmless against any claims made by third parties based on whole or in part on Seller's inability to perform because of Force Majeure.

XII. GOVERNING LAW

These Terms and all transactions between Seller and Buyer / Client are governed by the laws of the State of Delaware in the United States, without reference to conflict of laws principles. The United Nations Convention on Contracts for the International Sales of Products will not apply to these Terms. Any legal action to enforce the Terms shall be brought in the state of New York in state or Federal court located in Genesee County . Buyer / Client hereby consents to the jurisdiction of the courts of or in the State of New York located in Genesee County in connection with any dispute, controversy, action or other matter relating to or arising out of the Terms. Compliance with any local governmental laws or regulations relating to the location, use or operation of the Products, or its use in connection with other equipment, shall be the sole responsibility of Buyer / Client.

XIII. ENTIRE AGREEMENT & WAIVER

These Terms constitute the sole terms and conditions of the contract between Buyer / Client and Seller. No other terms, conditions, or understanding, whether oral or written, shall be binding upon Seller, unless hereafter made in writing and signed by Seller's authorized representative and, in the case of printed matter, also initialed by such representative next to such printed term or condition. Failure by Seller to insist upon strict performance of any term, warranty or condition of these Terms shall not be deemed a waiver thereof or of any rights or remedies that Seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

XIV. SEVERABILITY

Should any provision of this Agreement be judicially declared unenforceable, that provision shall be deemed stricken and the remainder shall continue in full force and effect insofar as it remains a workable instrument for effectuating the intents and purposes of the parties. The Parties further agree to renegotiate any so severed provision to bring the same within applicable legal requirements to the greatest extent possible.

XV. ASSIGNMENT; AUTHORITY

Buyer / Client shall not assign or transfer these Terms or any related contract or purchase order without the prior written consent of Seller. Seller shall expressly be permitted to assign or transfer, without the prior written consent of Buyer / Client, Seller's right to receive any or all of the payment due from Buyer / Client under these Terms. Where applicable, Buyer / Client represents and warrants that the undersigned below is the duly authorized officer for execution and acceptance of these Terms and the order.