



BOUNTIFUL FARMS NURSERY, INC.

17280 Boones Ferry Road NE, Woodburn, Oregon 97071

503.981.7494 / 503.981.7224 / info@bountifulfarms.com

www.bountifulfarms.com

COMMERCIAL CREDIT APPLICATION

BUSINESS INFORMATION		
Legal Business Name	Trade Name/Assumed Business Name	
Mailing Address	Shipping Address	
City, State, Zip	City, State, Zip	
Phone No.	Fax No.	
Type of Business (Grower, Wholesale, Retail, Other)	Nursery License No.	
Type of Organization (Sole Proprietor, Corporation, Partnership, LLC)	Federal Tax ID No.	State Tax ID No.
Date Established	Resale Certificate No. (attach copy)	

OWNERS / SHAREHOLDERS / PRINCIPALS OF THE COMPANY			
Name	Title	Address/City/State/Zip	Phone No.

CONTACTS			
	Name	E-mail	Phone No.
Buyer			
A/P			

BANK REFERENCE		
Name of Bank	Contact Name	
Branch	Checking Account No.	Savings Account No.
Address	Phone No.	
City, State, Zip	Fax No.	

NURSERY TRADE REFERENCES			
Business Name	Address/City/State/Zip	Phone No.	Fax No.

Customer hereby authorizes Bountiful Farms Nursery, Inc. (Bountiful) and any credit bureau or other investigative agency retained by Bountiful to investigate Customer's credit worthiness and financial responsibility, specifically including without limitation express authority to contact the references listed herein. Customer authorizes all creditors, financial institutions and credit agencies to disclose to Bountiful all requested information regarding Customer's finances and financial affairs, and a copy of this Commercial Credit Application shall be good and sufficient proof of such authorization.

Customer is applying for credit for other than household or family purposes and all purchases of trees and other products from Bountiful are for commercial purposes. Customer acknowledges that this is not a commitment or agreement by Bountiful to provide credit to Customer. Bountiful retains the right, if it elects to extend credit terms to Customer, to revoke such credit terms at any time and require cash payment in advance for all future sales.

Customer, in signing this Commercial Credit Application, accepts and agrees to be bound by the terms and conditions of sale set forth on the reverse side hereof. Customer agrees that all sales of trees and other products by Bountiful shall be governed solely and exclusively by such terms and conditions of sale, except as hereafter supplemented and/or modified in a written instrument signed by Bountiful, which terms and conditions shall supersede and prevail over any purchase order submitted by Customer.

Signature _____

Title _____

Print Name _____

Date _____

STANDARD TERMS OF SALE

- 1. Orders.** Customer shall initiate all purchases by submitting an order, either verbally or in writing to Bountiful. All orders shall be subject to acceptance or rejection by Bountiful. If Bountiful accepts an order, Bountiful shall send an acknowledgment to Customer and book the order; provided, however, such acceptance shall be subject to crop growing conditions and availability, as the trees generally have not been dug and graded at the time of acceptance and Bountiful is working from estimates. Bountiful shall have the right, in its sole discretion, to cancel any order if any trees become unavailable as a result of, or are damaged or adversely affected by, any drought, flood, fire, frost, errors in count, crop growing conditions, or any other cause beyond the control of Bountiful.
- 2. Acceptance of Customer Order Conditioned on Customer's Assent to Terms Herein.** Bountiful's acceptance of Customer's order is expressly conditioned on Customer's acceptance of the terms and conditions of sale set forth herein. Customer shall be deemed to have accepted the terms and conditions of sale set forth herein if Customer accepts delivery of any of the trees. All sales of trees to Customer shall be governed solely and exclusively by the terms and conditions of sale set forth herein, and any additional terms set forth in Bountiful's signed acknowledgment, which terms and conditions shall supercede and prevail over all terms and conditions of Customer's order. Bountiful expressly rejects all terms and conditions of Customer's order and shall not be bound by any such terms or conditions in proceeding forward with the sale of trees to Customer.
- 3. Price.** Bountiful's prices vary depending on the type and size of tree. Bountiful reserves the right to change its prices, and any price quotation made to a Customer, at any time and from time to time without notice. All prices charged Customer are exclusive of freight, shipping and insurance charges, and any sales, use, excise or similar taxes, all of which shall be paid by Customer.
- 4. Delivery.** All trees sold to Customer shall be sold FOB Bountiful's nursery in Woodburn, Oregon (the FOB Point) at which time title to the trees shall pass to Customer. Customer shall pay all freight, shipping and insurance charges; all sales, use, excise or similar taxes; and any and all other costs or charges incurred after delivery of the trees to the carrier at the FOB Point. All risk of loss or damage from any cause whatsoever shall be borne by Customer after delivery of the trees to the carrier at the FOB Point. Bountiful shall, in its sole discretion, determine all shipping dates and delivery schedules, as all sales are subject to crop growing conditions, Bountiful's digging schedule, and availability.
- 5. Payment.** All sales are cash in advance unless credit terms have been approved by Bountiful in writing in advance. Unless otherwise agreed by Bountiful in writing, Customer shall, with respect to all cash in advance sales, prepay Bountiful's invoice at least four weeks prior to the scheduled shipment date. If Customer's order is placed with Bountiful less than four weeks prior to the scheduled shipment date, Customer shall prepay Bountiful's invoice prior to the trees being dug. All Customers desiring credit terms must complete and sign a Commercial Credit Application and, if requested, provide appropriate personal guaranties of payment. If Bountiful decides to extend credit terms to Customer, payment shall be made by Customer in lawful money of the United States within 30 days of the date of Bountiful's invoice. Bountiful shall have the right to revoke at any time credit terms extended to Customer and reinstate cash in advance on further sales to Customer. Customer shall pay a late payment charge on any invoice not paid in full within 30 days of the date thereof equal to 1.5% per month of the unpaid balance, or if said 1.5% is deemed to be unenforceable under applicable law, the highest late payment charge permissible under applicable law.
- 6. Duty to Inspect Upon Delivery.** Customer shall inspect all trees immediately upon delivery and shall give written notice to Bountiful within 10 days of the date of delivery as to any discrepancies between Bountiful's invoice and the quantity of trees received, or any claim that the trees are damaged or defective or do not conform to the terms and conditions of sale set forth herein. If Customer shall fail to give such notice, the trees shall be deemed to be satisfactory, and Customer shall be deemed to have accepted the same and shall be bound to pay for the trees in accordance with the terms set forth herein. Customer expressly waives any right Customer may have to revoke acceptance after the expiration of said ten-day period.
- 7. Limited Warranty.** Bountiful warrants that all trees sold hereunder will be true to name. Customer acknowledges that no other representations or warranties have been made to, or relied upon by, Customer in proceeding forward with the purchase of the trees, specifically no representations or warranties have been made as to growth or livability of the trees, or the results of transplanting the trees after delivery, as growing conditions are beyond Bountiful's control and Bountiful cannot guarantee that any trees will live after delivery. Bountiful's limited warranty shall not be transferable and shall be null and void if Customer fails to pay for the trees in full when due.
- 8. DISCLAIMER OF UNSTATED WARRANTIES.** BOUNTIFUL'S LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE TREES SOLD TO CUSTOMER HEREUNDER. BOUNTIFUL MAKES NO OTHER WARRANTIES WHATSOEVER TO CUSTOMER AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.
- 9. Limitation of Liability.** Bountiful shall not be liable to Customer hereunder for any claim or damage in excess of the purchase price paid by Customer, and received by Bountiful, for the trees. Under no circumstances shall Bountiful be liable to Customer for any consequential, incidental, indirect, or special damages, or any punitive or exemplary damages, arising from, or in any way related to, the sale of the trees hereunder or Customer's use, or inability to use, the same, notwithstanding any failure of essential purpose of any limited remedy herein. This exclusion shall apply regardless of whether such damages are sought based on breach of contract, breach of warranty, negligence, strict liability in tort, or any other legal or equitable theory. No action, regardless of form, arising out of the sale of trees to Customer may be brought by Customer against Bountiful more than one year after the date of delivery of the trees.
- 10. Force Majeure.** Bountiful shall have no obligation or liability whatsoever arising out of or in connection with any delay or failure to perform any of its covenants or obligations under an accepted order, or any loss or damage incurred by Customer as a result thereof, if such delay or failure is caused, in whole or in part, either directly or indirectly, by crop growing conditions, fire, flood, frost, or other acts of God, strikes or other labor trouble, errors in count, or any other occurrence, act, cause or thing beyond the control of Bountiful, which prevents, hinders or makes fulfillment of the order impractical, any of which shall, without liability, excuse Bountiful from performance of the order.
- 11. Restocking and Storage Fees.** If Customer refuses delivery of any trees after Bountiful has dug the same, Bountiful shall have the right to charge Customer a restocking fee equal to 15% of the purchase price of such trees, which restocking fee shall be in addition to, and not in lieu of, any and all other rights and remedies available to Bountiful. If Customer requests delivery of any trees after May 1st, Bountiful shall have the right to charge a storage fee equal to 5% percent per month of the purchase price of such trees.
- 12. Off-Season Digging.** Bountiful commences digging its trees in the fall after it determines that the trees are dormant and continues digging so long as the trees remain dormant. Bountiful may, if Customer so requests, dig certain trees outside of Bountiful's normal digging season; provided, however, customer shall, in such event, pay Bountiful a special digging charge equal to 15% of the purchase price of such trees and shall assume all risks associated with digging the trees at a time when they are not dormant, including without limitation the risk of loss of the trees after they are transplanted.
- 13. General Provisions.**
 - 13.1** Bountiful has, with respect to all nursery stock bearing plant patent identification, grown such nursery stock pursuant to a license from the patent owner. Customer shall have no right to propagate or reproduce, and shall not propagate or reproduce, any such nursery stock without the express written permission of the patent owner.
 - 13.2** These terms and conditions constitute the entire, final and complete agreement and understanding of the parties with respect to Bountiful's sale of trees to Customer, and shall supercede and replace all terms and conditions as set forth in Customer's order. None of the terms and conditions contained herein may be added to, modified, superceded or otherwise amended, unless such addition, modification or amendment is set forth in writing and signed by duly authorized representative of Bountiful.
 - 13.3** All rights, remedies and liabilities herein given to or imposed upon the parties shall extend to, inure to the benefit of and bind, as the circumstances may require, the parties and their respective heirs, personal representatives, successors and, insofar as this Agreement is assignable by the terms hereof, assigns.
 - 13.4** In the event Customer fails to pay any sums owing to Bountiful, Customer shall reimburse Bountiful for all collection costs and expenses, including without limitation reasonable attorneys' fees, incurred by Bountiful in collecting such sums. In addition, if litigation is commenced by either party to enforce any provision of this Agreement, or by reason of any breach of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, both at trial and on appeal.
 - 13.5** No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
 - 13.6** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oregon, without regard to its conflict of law principles. Any suit or action arising out of or in connection with this Agreement shall be brought and maintained exclusively in the federal or state courts in Portland, Oregon. Bountiful and Customer hereby irrevocably submit the exclusive jurisdiction of such courts for the purposes of such suit or action and hereby expressly and irrevocably waive, to the fullest extent permitted by law, any objection they may now or hereafter have to the venue of any such suit or action in any such court and any claim that any such suit or action has been brought in an inconvenient forum.