



Terms of Sale

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This Terms of Sale Agreement ("Agreement") is entered into on _____

("Effective Date") by and between Headstart Nursery, Inc., a California corporation ("Headstart") and

_____ ("Buyer"). In consideration of the sale of nursery products

to Buyer by Headstart, Buyer agrees to be bound by the terms of this Agreement.

READ THIS AGREEMENT CAREFULLY. THE TERMS OF THIS AGREEMENT SHALL GOVERN ALL TRANSACTIONS BETWEEN HEADSTART AND BUYER OCCURRING AT ANY TIME. BY SIGNING THIS AGREEMENT, BUYER AGREES TO BE BOUND BY ITS TERMS FOR ANY AND ALL SALES. TERMS SPECIFIC TO THE PARTICULAR PRODUCT PURCHASED BY BUYER SUCH AS VARIETY, TIME OF DELIVERY AND PRICE SHALL BE SET FORTH IN A SEPARATE DOCUMENT ("Invoice").

1. **Authority of Buyer.** When used in this Agreement, the term "Buyer" means the person, firm, corporation, limited liability company or other entity purchasing goods from Headstart. The person executing this Agreement represents and warrants to Headstart that he/she is authorized to do so and to bind Buyer to the terms contained herein.
2. **Time of Delivery.** The time of delivery for the goods purchased by Buyer ("Goods") shall be set forth in the Invoice.
3. **Place of Delivery.** The Goods shall be delivered to Buyer at the address specified on the Invoice, or at such other place as Buyer may direct Headstart in writing.
4. **Time of Payment.** Buyer shall pay for the Goods as provided on the Invoice.
5. **Identification – Risk of Loss.** Identification of the Goods under California Commercial Code §2501 shall occur at the moment Buyer orders any Goods from Headstart ("Order"). Risk of loss of the Goods shall pass to the Buyer on identification.
6. **Title.** Legal title to the Goods shall remain with Headstart until Buyer takes physical possession of the goods.
7. **Disclaimer of Express Warranties.** Headstart warrants that the Goods are as described in the Invoice, but no other express warranty is made with respect to the Goods. If any sample is or has been provided to Buyer, the sample was used merely to illustrate the general type and quality of the Goods and not to represent that the Goods would necessarily conform to the model or sample.
8. **Right of Inspection.** Buyer shall have the right to inspect the goods at the time and place of delivery.
9. **Method of Payment.** Payment shall be made in cash, by certified check, by valid company check or by wire transfer.

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10. **Remedies.** Buyer and Seller shall have all remedies afforded each by the Uniform Commercial Code or other applicable law. Without limiting the foregoing, in the event of nonpayment for seed, Seller shall be entitled to enforce the lien provided by California Food & Agricultural Code Section 57561 *et seq.* and any other lien rights afforded by law.
11. **Changes to Order.** Any Order made by Buyer may be changed only by written request of Buyer made no later than three days after the Order is made. In the event that Buyer changes the order after such time, Headstart, in its sole discretion, may make such change but shall charge Buyer for any Goods which Headstart is unable to sell to third parties.
12. **Organic Goods.** In the event that any Goods are certified organic agricultural product, Buyer shall not take any action that would jeopardize or negate the organic certification of any materials returned to Headstart by Buyer. Seller shall be liable for any damages arising from breach of this obligation.
13. **Attorneys' Fees.** In the event any party hereto institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding shall be paid all reasonable attorneys' fees and costs.
14. **Controlling Law.** This Agreement and all transactions between the parties shall be governed by and construed and enforced in accordance with the internal laws of the State of California without reference to California's choice of law rules. The Parties acknowledge and understand that the making of this Agreement is in Santa Clara County, California. Any suit, arbitrations, mediation or other remedial process shall be filed and maintained in Santa Clara County, California.
15. **Severability.** The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.
16. **Authority of Headstart's agents.** No agent, employee or representative of Headstart shall bind Headstart to any affirmation, representation, or warranty concerning the Goods except as provided in this Agreement and the Invoice.

Signature

Print Name

Company Name

Date