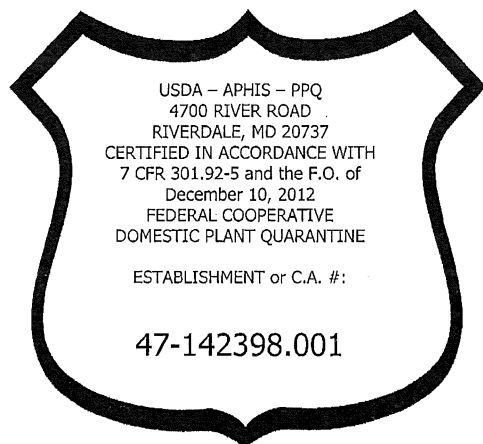


## Terms and Conditions

- Orders.** Nursery stock ("Goods") are available subject to inventory. Goods purchased by Seller for re-wholesaling when shortages exist in Seller's inventory may have a higher price than listed in Seller's catalog. If this situation should occur, Buyer will be informed at the time of purchase. Prices are subject to change without notice. The catalog current as of the Effective Date supersedes all prior lists, catalogs and/or quotes. The use of preprinted forms, such as purchase orders or similar documents, is for convenience only and all terms and conditions stated therein, except for any information called for by this Agreement, are void and of no effect.
- Warranty.** Seller warrants that Goods are healthy and in good condition at delivery. Seller exercises care to have all Goods true to name, but gives no warranty as to the variety description, life or productivity of any Goods sold. Seller's sole obligation to Buyer, at Seller's sole discretion, shall be to either replace Goods or credit Buyer for Goods covered by this warranty. This warranty does not extend to Goods which have been subject to abuse, neglect, accident or misuse of Goods. THE EXPRESS WARRANTY SET FORTH HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES. BUYER'S SOLE REMEDY FOR ANY BREACH OF THE EXPRESS WARRANTY, FOR ANY REASON AND WHETHER OR NOT DAMAGES WERE FORESEEABLE, IS SELLER'S OBLIGATION TO REPLACE GOODS OR CREDIT BUYER AS SET FORTH ABOVE.
- Delivery; Claims; Returns.** Goods are delivered FCA at Seller's nursery in Salem, Oregon. Seller's responsibility ends when Goods are delivered to the shipping carrier. Buyer pays all shipping charges and taxes (except taxes related to Seller's income). Seller may, at its sole discretion, ship COD. Delivery charges are subject to change, depending on fuel prices. Seller will bill packaging for shipping to Buyer at cost. Buyer must make all claims in writing immediately upon receipt of Goods. Seller will not entertain any claims which are not made within five (5) days after delivery of Goods. Seller will charge Buyer a 10% restocking fee for Goods returned without cause or rejected.
- Payment.** Payment is due upon delivery of Goods. Seller accepts VISA, MasterCard, and Discover credit cards and debit cards for payment. All checks returned for insufficient funds will have a \$30.00 service fee added to the outstanding amount. Goods not fully paid for may become subject to an agricultural produce (or other applicable) lien. Buyer shall pay Seller: (a) the purchase price; (b) a monthly service charge after delivery calculated at a 2.0% interest rate (or the maximum rate permitted by law, whichever is less) of the amount due or \$10 per month, whichever is greater; (c) all costs of collection including attorneys' fees; and (d) all sums due under this Agreement in accordance with the terms herein. Seller may extend credit to established buyers. Credit accounts are due before the 30<sup>th</sup> of the month following purchase. Overdue credit accounts are subject to a monthly service charge calculated at a 2.0% interest rate (or the maximum rate permitted by law, whichever is less) of the amount due or \$10 per month, whichever is greater.
- Miscellaneous Provisions.** Time is of the essence in this Agreement.
  - Notices.** Each party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement shall give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, registered or certified mail (with return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid), facsimile or email (with proof of delivery). Any party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "Addressee") at the address listed herein or to another Addressee or another address as designated by a party in a Notice pursuant to this Section. A Notice is effective only if the party giving the Notice complied with this Section and the Addressee received the Notice.
  - Limited Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES RELATED TO OR ARISING FROM THIS AGREEMENT FOR ANY REASON, EVEN IF THE OTHER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE IN ADVANCE. SELLER'S LIABILITY FOR DAMAGES RELATED TO OR ARISING FROM THIS AGREEMENT UNDER ANY LEGAL THEORY SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SELLER UNDER THIS AGREEMENT.
  - Governing Law; Venue; Attorneys' Fees.** The laws of the State of Oregon, excluding its conflicts of laws provisions, govern all matters arising from or related to this Agreement. All litigated disputes arising from or related to this Agreement shall be heard exclusively in, and the parties irrevocably consent to jurisdiction and venue in, the state and federal courts of Marion County, Oregon. Except for matters related to payment, any arbitration, suit or other legal action related or arising from this Agreement must be filed or officially commenced by a party making a claim no later than one (1) year after the cause of the claim first arises. If either party employs attorneys to enforce rights arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other related expenses.
  - Entire Agreement.** This Agreement constitutes the complete and final agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement. The parties may amend this Agreement only by a written agreement signed by the parties' authorized representatives that identifies itself as an amendment or exhibit to this Agreement.



State of Oregon  
DEPARTMENT OF AGRICULTURE  
Plant Division  
635 Capitol Street NE, Salem, Oregon 97301-2532  
Telephone: 503/986-4644

Shipping Permit No. 142398

This is to certify that the nursery doing business under the above permit number has been regularly inspected and is the best of our knowledge is free from dangerous pests and diseases.



Form 4002 - Revised 12/02

Daniel J. Hilburn  
Administrator  
Plant Division