

## Spring Meadow Nursery, Inc. Standard Terms and Conditions

**1. BINDING CONTRACT.** These terms and conditions set forth the sole terms for the sale of goods and services by Spring Meadow Nursery, Inc., a Michigan corporation ("Spring Meadow"), and any contract made for the sales of goods and services by Spring Meadow is expressly conditional on Buyer's assent to the terms stated herein. Spring Meadow disclaims, objects and rejects any Buyer document, including a purchase order or confirming order that in any way adds to, varies, conflicts with or attempts to alter these terms. In the event of any dispute between these terms and any document of Buyer, these terms shall control.

**2. PRICES AND TAXES.** All prices are FOB Spring Meadow's place of business. All future orders will be confirmed immediately but are subject to applicable prices at the time of shipment. All prices are subject to change without notice. The amount of any local, state or federal tax levied on the goods is not charged by Spring Meadow due to its agricultural designation and shall remain the sole responsibility of Buyer. Packing and shipping charges are not included in the prices and will be added to the invoice at the time of shipment. Cash in advance accounts will prepay the packing/shipping charge. If actual shipping charges exceed our estimate, Buyer will be responsible for all additional charges incurred. Effective 7/1/2012 Buyer agrees that Buyer will not sell wholesale any Proven Winners® ColorChoice® finished plants at prices less than the Quality Standard Pricing that Spring Meadow assigns to its products from time to time. Quality Standard Pricing is subject to change on an annual basis without notice. Spring Meadow will publish an annual Quality Standard Pricing standard. Please contact the sales department for a copy.

**3. MINIMUM ORDER.** Spring Meadow's minimum order is 1 tray of a cultivar and a total order of not less than 20 trays.

**4. CREDIT ACCOUNTS.** Orders will be accepted on a CASH IN ADVANCE basis only unless a written confidential credit application has been submitted to and approved by Spring Meadow. Processing time is approximately 6 weeks; we encourage customers to apply for terms during the off season, as processing times may be longer during the shipping season. If buyer has established credit in the manner described above, the payment terms are 2% 10 NET 30. Any portion of the order cost not paid in accordance with these payment terms shall bear interest from the due date in the amount of 1.5% per month or at a rate not to exceed lawful limits, until paid. Payment on delinquent accounts is applied first to accrued interest. The early payment discount does not apply when credit cards are used for payment on credit accounts. Buyer shall reimburse Spring Meadow for all actual costs and attorneys' fees incurred in enforcing any term of this agreement. A \$25.00 charge will be assessed for all payments returned for insufficient funds.

**5. CASH IN ADVANCE ACCOUNTS; VISA AND MASTERCARD ACCOUNTS.** A 25% deposit is encouraged for all credit card (Visa, Master Card) and cash in advance orders. Although the deposit is not required, inventory will be allocated first to customers who have set up 2% 10 NET 30 terms, then to orders with a deposit in place. Payment in full must be received 30 days prior to shipping date; credit cards will be charged in full 30 days prior to shipping. Cancelled orders may be charged a processing and/or restocking fee. Freight and packaging for credit card orders will be charged upon shipment.

**6. SHIPPING AND DELIVERY.** All shipments are FOB Spring Meadow's place of business, and all risk of loss and damage to the goods passes to Buyer upon delivery of goods to the common carrier. Any dates or schedules that are specified for delivery of services or goods are stated only approximately, calculated from the date of receipt of Buyer's order. All plant varieties are not available for fall or dormant winter/spring shipment. Spring Meadow will attempt to deliver plants as close as possible to a requested ship date, but reserves the right to adjust the shipping date based on the quality and readiness of the plants. Each tray of plants is boxed, stacked on pallets or racked, and then stretchwrapped, or netted together as one shipping unit. Palletized or racked shipments are normally a better value than FedEx if Buyer's order exceeds 20 trays. Buyer must notify us in advance if unable to accept a pallet shipment. Spring Meadow ships FedEx in custom designed boxes. Four trays per box, specially packed in an upright position travel to Buyer's door.

**7. SHIPPING DAMAGES CLAIMS.** All shipping damages must be noted at the time of receipt of goods from the carrier. Any box breakage or other obvious damages must be noted in writing on the carrier's bills of lading. Claim forms are available from the carrier.

**8. FORCE MAJEURE.** Spring Meadow shall not be responsible or liable for any delays in service completion due to any cause or condition beyond its control, including, without limitation, fire, flood, earthquake, labor dispute, shortage of materials or supplies, riot or other civil disturbance, war, acts of God or nature, accident, or any acts of any government.

**9. PROVEN WINNERS® COLORCHOICE® FEES.** Proven Winners® ColorChoice® fees are collected to cover patent, trademark, breeder, brand and marketing costs in addition to the listed plant price. Proven Winners® ColorChoice® fees are subject to change without notice.

**10. PROVEN WINNERS BRAND.** Upon the purchase of any patented or trademarked plants from Spring Meadow, Buyer agrees to the following: (a) To purchase and affix the trademark and/or patent tag, which properly identifies the plant, to each plant sold. (b) To clearly identify proper plant names including plant patent numbers and trademark names in all sales literature. (c) To feature the Proven Winners® ColorChoice® branded product line and not affix other branded tags or co-brand with any other brand. (d) To not propagate or aid in the illegal propagation of any Proven Winners® ColorChoice® plant without a license. (e) To sell Proven Winners® ColorChoice® plants in approved Proven Winners® ColorChoice® branded containers. NOTE: FEDERAL LAW STRICTLY PROHIBITS THE ASEXUAL PROPAGATION OF PATENTED PLANTS, WITHOUT A LICENSE. STATE AND/OR FEDERAL LAW PROHIBITS THE UNAUTHORIZED USE OF TRADEMARKS.

**11. LIMITED WARRANTY.** Spring Meadow warrants its plants to be true to name, to be inspected by the Michigan Department of Agriculture and certified to be apparently free of dangerous insects and dangerously contagious plant diseases, and to be in good living condition at the time of delivery to the common carrier. Buyer's remedy is limited, in the sole discretion of Spring Meadow, to replacement of any plants determined to be defective and covered by this limited warranty. Replacement plant material will be provided as soon as production plans permit and will be shipped by Spring Meadow at no cost to Buyer. Claimed defective plants must be discarded and documentation of such provided.

**12. EXCLUSION OF OTHER WARRANTIES.** THE LIMITED WARRANTY STATED ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SPRING MEADOW HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR FUTURE GROWTH. NO WARRANTIES OR REPRESENTATIONS MADE AT ANY TIME BY ANY REPRESENTATIVE OF SPRING MEADOW SHALL BE EFFECTIVE TO VARY OR EXTEND THE LIMITED WARRANTY OR OTHER TERMS.

**13. LIMITATION OF CLAIMS FOR DEFECTIVE PLANTS.** No plant claims covered by the limited warranty may be brought against Spring Meadow more than ten (10) days after shipment. Claim notification must be in writing. No claims will be paid on plants shipped while dormant.

**14. LIMITATION ON LIABILITY.** Under no circumstance shall Spring Meadow's liability to Buyer exceed the value of this agreement. Under no circumstances, whether arising in contract, tort, equity or otherwise, shall Spring Meadow be liable for consequential, incidental or special damages (including loss of use, lost profits, increased operating or maintenance expense), related to the provision of services or goods.

**15. APPLICABLE LAW.** This agreement shall be deemed made in Ottawa County, Michigan and shall be governed by Michigan law without regard to its conflict of laws principles.

**16. DISPUTE RESOLUTION:** Any action arising out of it shall be governed by Michigan law and shall be brought in the District or Circuit Court for Ottawa County or in the U.S. District Court for the Western District of Michigan. Buyer consents that such courts shall have personal jurisdiction over Buyer as to any such action and that the mailing of any process to Buyer's last known address by registered mail shall constitute lawful and valid service of process.

**17. MISCELLANEOUS.** All notices shall be provided to the addresses set forth in this agreement and if none is provided, to the party's resident. Wherever possible, all terms shall be interpreted consistently. If a conflict arises as to price, payment or delivery, the typed terms on the front page shall control over printed provisions on this side. For any other conflict, these Terms and Conditions shall control. No usage in trade shall create a conflict with these terms. Spring Meadow reserves the right to correct any typographical error in this Agreement. If any provision is determined to be unenforceable, the remainder of this agreement shall remain in full force and effect.

**18. ENTIRE AGREEMENT AND AMENDMENT.** This agreement contains all of the terms of the agreement between Spring Meadow and Buyer as to its subject matter and supersedes all prior oral or written representations, agreements, and other communications between Spring Meadow and Buyer. This agreement may be amended only by a writing signed by Spring Meadow and an officer of Buyer.