



**TERMS OF SALE – FOR SHIPMENTS FROM CALIFORNIA**

1. **SHIPMENT** - All prices quoted by Speedling for orders of goods are freight on board (FOB) purchaser’s facility unless otherwise agreed to and documented on the plant order form. Method of shipment is at Speedling’s discretion, unless purchaser supplies Speedling with explicit written instructions. Each delivery constitutes a separate and independent contract. Delivery dates are estimates only and are subject to availability of goods. Speedling shall have no liability for failure to deliver seedlings or other materials by the estimated delivery dates, nor shall it be responsible for a delay in delivery or non-delivery which results from or is contributed to by causes beyond Speedling’s control.
2. **IDENTIFICATION-RISK OF LOSS** - Identification of the goods shall occur at the moment the goods are delivered to any carrier for shipment to purchaser. All risk of loss, title to and damage to the goods passes to purchaser upon delivery of the goods to the purchaser at purchaser’s facility.
3. **ACCEPTANCE OF GOODS BY PURCHASER** - If purchaser accepts the goods, purchaser’s acceptance shall be final and irrevocable. Purchaser’s retention of goods for more than twenty-four (24) hours after delivery to purchaser’s place of business, or designated place of delivery, shall be an irrevocable acceptance by purchaser.
4. **FREIGHT, TAXES AND OTHER CHARGES** - Speedling agrees to pay all costs for freight, transportation and insurance related to delivery of the goods to purchaser at purchaser’s facility unless agreed to and documented on the plant order form. Purchaser agrees to pay all additional costs and charges relating to the goods, including, without limitation, sales, excise and other taxes. Purchaser may provide any tax exemption certificates acceptable to the taxing authorities to Speedling.
5. **SHIPMENTS OUTSIDE OF THE UNITED STATES** - In the event any dispute arises concerning any aspect of agreements, including payment, and the purchaser is a resident of a country other than the United States of America, such dispute shall be resolved in accordance with the “Arbitration of Disputes” section of this agreement. Arbitration shall take place in San Luis Obispo County, California and the procedural and substantive law of California shall apply. Enforcement of the arbitrator’s decision shall be in accordance with the Convention of the Recognition and Enforcement of Foreign Arbitral Awards.
6. **PURCHASER’S RESPONSIBILITY FOR DAMAGE TO SPEEDLING’S EQUIPMENT** - Purchaser acknowledges and accepts full responsibility and liability for any damage that occurs to Speedling’s equipment, flats or trailers while in the custody of or while being used by purchaser.
7. **WARRANTIES, DISCLAIMERS AND REMEDIES FOR SEEDLINGS AND OTHER PLANTS**
  - a. **LIMITED WARRANTIES** - Speedling warrants that the seedlings or other plants delivered are visibly healthy at the time of delivery, FOB purchaser’s facility and are of the variety and size of cell specified in the shipping containers at the time of said delivery. Speedling warrants that the plants delivered conform, within reasonable tolerance, to the specifications in the order and that the variety and size of cell specified in the shipping containers conform to the order. This warranty gives you specific legal rights and you may have other rights which vary from state to state.
  - b. **DISCLAIMERS** - ALL SEEDLINGS OR OTHER PLANTS SOLD PURSUANT TO THIS AGREEMENT ARE PURCHASED “AS IS” AND “WITH ALL FAULTS” AND EXCEPT AS STATED ABOVE, SPEEDLING MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES AGAINST DISEASE, UN-PRODUCTIVITY, INSECT DAMAGE, LATENT DEFECTS OR ANY OTHER MATTER. ANY WARRANTIES ARISING UNDER THIS ORDER EXTEND ONLY TO THE ORIGINAL PURCHASER AND NOT TO ANY OTHER PERSON, GROUP OR ENTITY. No affirmation, representation or warranty concerning the seedlings or other plants sold under an order shall supersede these terms.
  - c. **PURCHASER’S OBLIGATIONS** - Within twenty-four (24) hours from the time of delivery of the seedlings or other plants to purchaser’s facility, purchaser shall examine the seedlings or other plants for defects and the examination shall include, but not be limited to, visible health, variety and size. If the purchaser identifies any defect in the seedlings or other plants, purchaser shall notify Speedling’s Customer Service Department of the defect by telephone within twenty-four (24) hours of the discovery of the defect. Purchaser must also provide Speedling with written notice by certified letter posted within three (3) days of the discovery of the defects. FAILURE TO COMPLY WITH THESE NOTICE REQUIREMENTS CONSTITUTES AN ABSOLUTE WAIVER OF ANY CLAIM AGAINST SPEEDLING. At Speedling’s request, purchaser shall return sufficient samples of the seedlings or other plants to Speedling and shall grant Speedling permission to enter upon purchaser’s premises to inspect the seedlings or other plants.
  - d. **REMEDIES AND LIQUIDATED DAMAGES** - Speedling’s obligations under the warranties arising pursuant to this order are limited to and shall be fully discharged by refunding the purchaser’s payment for that portion of the order found to be defective. IN NO EVENT WILL SPEEDLING BE LIABLE FOR MORE THAN THE PURCHASE PRICE OF THE SEEDLINGS OR OTHER PLANTS, NOR SHALL SPEEDLING BE LIABLE FOR CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, EXCEPT AS OTHERWISE REQUIRED BY LAW. PURCHASER RECOGNIZES AND AGREES THAT THIS LIMITATION OF CONSEQUENTIAL DAMAGES FOR COMMERCIAL LOSSES IS NOT UNCONSCIONABLE. *SPEEDLING ASSUMES NO LIABILITY FOR THE REPLACEMENT COST OF SEED IF SEED COSTS WERE NOT INCLUDED IN THE INITIAL PRICE.*
  - e. **RETURN OF SEEDLINGS OR OTHER PLANTS** - In no event shall purchaser return seedlings or other plants without obtaining Speedling’s prior permission. Any seedlings or other plants returned to Speedling with Speedling’s permission, other than pursuant to a warranty claim, shall be subject to a service charge of ten (10) percent of the invoice price, plus all transportation charges.

This agreement is intended as a final expression of the agreement of Speedling and the purchaser and is a complete and exclusive statement of their terms of the agreement; provided, however, that if the purchaser is a Speedling distributor, certain provisions of the distributorship agreement may apply. No oral statements, no course of prior dealing between parties and no usage of trade shall be relevant to supplement or explain any term in this order. An order can be modified or rescinded only in writing, signed by all the parties or their duly authorized representatives.
8. **APPLICABLE LAW AND ATTORNEY’S FEES** - Orders shall be governed by laws adopted by the State of California and in force on the date of this order. Venue for any disputes under this order shall lie in San Luis Obispo County, California. In connection with any litigation, including arbitration, or any other dispute arising under this order, the prevailing party shall be entitled to recover his expenses, including reasonable attorney’s fees and costs.
9. **ARBITRATION OF DISPUTES** - In the event that any dispute arises concerning any aspect of any agreement between the parties, either party shall have the right to make a written demand for arbitration. Within fifteen (15) days from the date of delivery of the arbitration demand, each party shall appoint an arbitrator who is familiar with agriculture to arbitrate the issues which are the subject of the dispute. The two arbitrators selected by the parties shall in turn appoint a third party arbitrator. In the event that the two arbitrators cannot agree on the selection of a third arbitrator within fifteen (15) days, then upon petition of either party to the Superior Court of the County of San Luis Obispo, California, the names of potential arbitrators, together with background information relating to their familiarity with agriculture, shall be submitted by both parties to the Superior Court for selection of the arbitrator. The arbitration shall be held in the County of San Luis Obispo, California, in accordance with the arbitration provisions of the California Code of Civil Procedure. An arbitration decision approved by at least two of the arbitrators shall be entered as a judgment by the Superior Court at the request of the prevailing party. Both parties shall share equally in the cost of the third arbitrator and the cost of the room where the arbitration is held. The prevailing party in the arbitration shall be awarded its others costs and expenses for the arbitration, including attorney’s fees, expert fees and costs of the arbitrator selected by the party.
10. **GENERAL PROVISIONS**
  - a. **ENTIRE AGREEMENT** – This agreement, all plant orders issued hereunder and all other acknowledgements and release forms, constitute the entire agreement between the parties with respect to the subject matter hereof. Purchaser agrees to not rely on any statement, agreement, writing, warranty or representation, other than those contained in this agreement, all plant orders and all other acknowledgements and release forms.
  - b. **SEVERABILITY** – If any term of this agreement is held to be unenforceable, all remaining terms of this agreement shall remain in effect and shall be fully enforceable.
  - c. **EFFECT OF AGREEMENT** – It is acknowledged and agreed by purchaser that, whether or not at any time the receipt of the transplants grown from seed for purchaser by Speedling may or may not be called or characterized as a “sale,” the terms, provisions, limitations and conditions stated herein shall, in any and all such circumstances, apply and be of full force and effect.
  - d. **GOVERNING LAW** – By signing below, purchaser acknowledges and agrees that this agreement shall be governed and controlled by the laws of San Luis Obispo County, California.

CUSTOMER NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINTED NAME/TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_