



## **TERMS OF SALE**

**(FOR SHIPMENTS FROM FLORIDA, TEXAS AND GEORGIA)**

**Customer/purchaser: \_\_\_\_\_ (print name) (“Customer”) executes this Terms of Sale (“Agreement”) in favor of Speedling, Incorporated (“Speedling”) (Customer and Speedling are individually “Party” or collectively “Parties”) and agrees that these terms and provisions will govern the Parties’ business transactions:**

- 1. SHIPMENT** – All prices and shipping and/or delivery methods reflect shipping by Customer freight on board (FOB) Speedling's facility, unless otherwise agreed by the Parties in writing. Method of shipment is at the discretion of the Party paying for shipping. Each delivery and order may constitute a separate and independent transaction or lot but each is governed by and subject to this Agreement. Delivery dates are estimates only and are subject to availability of goods, seedlings or other plant materials. Speedling shall have no liability to Customer for failure to deliver by the estimated delivery date, 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. As used in this Agreement, the term “Goods” shall include both the services provided by Speedling for the growth of seedlings/plant material and the actual seedlings/plant material. Customer agrees that the Goods and this Agreement are subject to Florida's Uniform Commercial Code- Sales (Chapter 672, FS).
- 2. IDENTIFICATION-RISK OF LOSS** –Identification of the Goods and Customer’s assumption of the risk of loss of the Goods occurs when the Goods are loaded for the Customer at Speedling’s facility, unless otherwise agreed to by the Parties in writing. All risk of loss, title to and damage to the Goods passes to Customer upon identification.
- 3. ACCEPTANCE OF GOODS BY CUSTOMER** – Subject to the terms in section 7 below, Customer’s acceptance of Goods will be final and irrevocable. Customer's retention of Goods for more than twenty-four (24) hours after delivery to Customer's place of business, or designated place of delivery, regardless of whether the Goods are conforming or nonconforming shall be an irrevocable acceptance of Goods by Customer.
- 4. FREIGHT, TAXES AND FINANCE CHARGES** - Customer agrees to pay all taxes (including sales, excise or other), freight, insurance, and all other charges related to the sale of Goods. Customer may provide Speedling with an acceptable tax exemption certificate. Customer agrees to pay Speedling a Finance Charge of 1.5% per month if payment is not received by payment due date for the order, delivery, lot, invoice or statement.
- 5. SHIPMENTS OUTSIDE OF THE UNITED STATES** - In the event any dispute arises concerning any aspect of this Agreement, the Goods, or any other contract, agreement or the business relationship between Speedling and Customer, and Goods are shipped outside the United States of America or Customer is a resident of a country other than the United States of America, such dispute shall be resolved only through arbitration under the arbitration provisions found in sections 8 and 10 below. Enforcement of the arbitration award or decision shall be under the Convention of the Recognition and Enforcement of Foreign Arbitral Awards.
- 6. CUSTOMER'S RESPONSIBILITY FOR DAMAGE OR LOSS OF SPEEDLING'S EQUIPMENT** - Customer acknowledges and accepts full responsibility and liability for any damage or loss that occurs to Speedling’s equipment, flats or trailers, while on Customer’s property, in custody or control of Customer or while Goods are being stored, planted or used by Customer.
- 7. WARRANTIES, DISCLAIMERS AND REMEDIES**
  - a. LIMITED WARRANTIES** - Speedling warrants that the Goods are visibly healthy at the time of shipment, FOB Speedling's facility and are of the variety and size of cell specified in the bill of lading at the time of shipment. Speedling warrants that the Goods conform, within reasonable tolerance, to the specifications in the Plant Order Form (“POF”). This warranty gives Customer specific legal rights and Customer may have other rights which vary from state to state.
  - b. DISCLAIMERS** - ALL GOODS 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 AGREEMENT EXTEND ONLY TO THE ORIGINAL CUSTOMER AND NOT TO ANY OTHER PERSON, GROUP OR ENTITY. No other written or oral affirmation, representation or warranty concerning the Goods will supersede or modify these Disclaimers.
  - c. CUSTOMER'S OBLIGATIONS** - Within twenty-four (24) hours from the time of delivery of the Goods, Customer shall inspect and examine the Goods for defects and the inspection and examination shall include, but not be limited to, visible health, infestation, variety and size. If Customer identifies any defect in the Goods, Customer shall notify Speedling’s Customer Service Department of the defect by telephone and e-mail within twenty-four (24) hours of the discovery of the defect. Customer must also provide Speedling with written notice of defect by certified letter mailed within three (3) days of the discovery of the defect. CUSTOMER’S FAILURE TO COMPLY WITH THESE NOTICE REQUIREMENTS CONSTITUTES AN ABSOLUTE WAIVER OF ANY CLAIM AGAINST SPEEDLING. Upon timely notice of defect, at Speedling’s request, Customer shall return sufficient samples of the defective Goods and grants Speedling permission to enter upon the land where the defective Goods are located to inspect the land and Goods.
  - d. REMEDIES AND LIQUIDATED DAMAGES** - Speedling's obligations under the warranties arising under this Agreement are limited to and shall be fully discharged by crediting or refunding the Customer’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 DEFECTIVE GOODS, INCLUDING SEEDLINGS OR OTHER PLANTS, NOR SHALL SPEEDLING BE LIABLE FOR CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, EXCEPT AS OTHERWISE REQUIRED BY LAW. CUSTOMER RECOGNIZES AND AGREES THAT THIS LIMITATION OF DAMAGES FOR COMMERCIAL LOSSES IS NOT UNCONSCIONABLE. *SPEEDLING ASSUMES NO LIABILITY FOR THE REPLACEMENT COST OF SEED IF SEED WAS PROVIDED BY CUSTOMER.*
  - e. RETURN OF GOODS** - Customer may not return Goods without obtaining Speedling's prior permission. Any Goods returned to Speedling without Speedling's permission, will be subject to a service charge of ten (10%) percent of the invoice price, plus all transportation charges.
  - f. FINAL EXPRESSION OF AGREEMENT** – Customer agrees that it has or will execute an Application for Account, and it may have applied for Customer Credit to Speedling (collectively, the “Applications”). The Applications incorporate this Agreement and they also contain certain provisions relating to the business relationship between the Parties. To the extent not inconsistent with this Agreement, the Parties are still governed by the Applications. Except on issues addressed specifically in the Applications, this Agreement is intended as a final

expression of the agreement between Customer and Speedling and is a complete and exclusive statement of the terms of their agreement; provided, however, that if the Customer is a Speedling distributor, certain provisions of the distributorship agreement may apply. No oral statements, no course of prior dealing between Customer and Speedling and no usage of trade will be relevant to supplement or explain any term in this Agreement. An order for Goods may be modified or rescinded only in writing, signed by Speedling and Customer through their duly authorized representatives.

- 8. APPLICABLE LAW AND ATTORNEY'S FEES** – This Agreement, the Goods and any orders will be governed by laws of the State of Florida. Venue for any arbitration or litigation action arising out of this Agreement or the Goods will be exclusively in Hillsborough County, Florida. In litigation relating to this Agreement or the Goods, Customer agrees that jurisdiction and venue are appropriate in the Circuit Court for the Thirteenth Judicial Circuit, in and for Hillsborough County or the United States District Court for the Middle District of Florida, Tampa Division. In any arbitration or litigation arising under this Agreement or the Goods, the prevailing Party shall be entitled to recover its expenses, including reasonable attorney's fees and costs in the underlying arbitration or lawsuit and any appeal. If applicable, the arbitration panel member(s) are authorized to award reasonable attorney's fees to the prevailing Party.
- 9. CUSTOMER'S BREACH OF AGREEMENT** – Should Customer breach this Agreement by failing to timely accept or pay for the Goods, then Speedling will have all rights afforded it under Florida Law, including, but not limited to the right to terminate or cancel the Agreement and any related orders, the right to cease shipping Goods, and the right to sell Customer's Goods. In the event of Customer's default, Speedling will give Customer a written notice of default and afford Customer three (3) business days to cure said breach. Customer will have three (3) business days to cure any breach caused by its refusal to take delivery of Goods by accepting and paying for the Goods or in the case of non-payment, by paying its past due invoice(s), statement(s) and account(s).
- 10. LITIGATION/ARBITRATION OF DISPUTES** - In the event any dispute arises concerning any aspect of the Agreement and the Goods, the non-breaching Party may have the dispute resolved either in litigation or arbitration. Arbitration and litigation will be subject to sections 8 and 11 herein. If arbitration is selected, the non-breaching party will make a written demand for arbitration. Within fifteen days (15) from receipt of the written demand, each Party will appoint one (1) arbitrator. The two appointed arbitrators will then select a third arbitrator. If either Party fails to timely designate or appoint an arbitrator or if the two appointed arbitrators cannot agree on a third arbitrator within thirty (30) days, either Party may request that selection of the third arbitrator be made by a Circuit Court Judge in the Thirteenth Judicial Circuit in and for Hillsborough County. The Arbitration hearing will take place in Hillsborough County, Florida, and the Revised Florida Arbitration Code (Chapter 682), Florida Rules of Civil Procedure and the Florida Evidence Code will apply. An arbitration award or decision approved by at least two arbitrators will bind and either Party may enforce said arbitration award or decision in the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida. Each Party to the arbitration will pay the expenses of its appointed arbitrator and equally share the expense of the third arbitrator. The Parties agree that any arbitration action may not be extended to include any individual or entity beyond the Parties.
- 11. JURY TRIAL WAIVER** – IN THE EVENT EITHER OR BOTH PARTIES CHOOSE TO LITIGATE THEIR DISPUTES, THE PARTIES HEREBY IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, THE GOODS, AND RELATED ORDERS AND TRANSACTIONS.
- 12. FORCE MAJEURE** – Speedling will not be responsible for cancellation or delay in delivery or performance resulting from causes beyond its reasonable control.
- 13. GENERAL PROVISIONS**
  - a. GOVERNING AGREEMENT** – This Agreement, which is incorporated into and a part of the Applications, all Plant Order Forms issued hereunder and all other acknowledgements and release forms, constitute the governing agreement between the Parties. Customer agrees that it has not, nor will it rely on any statement, agreement, writing, warranty or representation, other than those contained in this Agreement, the Applications, POFs, and all other acknowledgements and release forms.
  - b. ARM'S LENGTH TRANSACTION** – Customer agrees that Agreement, the Applications and POFs represent an arm's length transaction.
  - c. SEVERABILITY** – If any term of this Agreement is held to be unenforceable, all remaining terms of this Agreement remain in effect.
  - d. EFFECT OF AGREEMENT** – It is acknowledged and agreed by Customer that, regardless of whether Customer's receipt of the Goods is called or characterized as a "sale," the terms, provisions, limitations and conditions stated in this Agreement, will, in all such circumstances, apply and be of full force and effect.
  - e. TERM OF AGREEMENT** – This Agreement will have an initial term of one (1) year beginning on the date below. The term will automatically renew for additional terms of one (1) year unless a written notice of termination is provided by either non-breaching Party or the Agreement is modified or Amended by the Parties.
  - f. AUTHORIZED SIGNOR** – The individual signing this Agreement on behalf of Customer certifies that he or she has the right, power and authority to execute this Agreement for and on behalf of Customer.

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

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

**SIGNOR'S NAME:** \_\_\_\_\_

**SIGNOR'S TITLE:** \_\_\_\_\_

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

*Revised  
8/2017*