

TERMS AND CONDITIONS

1. ENTIRE AGREEMENT

This signed document is the entire, final and complete agreement between the Purchaser (buyer) and McKenzie Farms (seller) or its Assigns and supercedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives. Any and all representations, promises, warranties or statements by Seller's agent that differ in any way from the terms of this written contract shall be given no force or effect.

No other terms or conditions exist unless in writing signed by both parties. (See 12 below)

2. PAYMENT

All sales shall be paid in full on or before December 24 unless otherwise agreed to in writing. Seller reserves the right to restrict the terms of payment or to require payment in full prior to shipment if in the Seller's opinion, Buyer's financial condition or other circumstances do not warrant shipment according to terms originally specified herein. All past due accounts are subject to a late charge computed at a periodic rate of 1 1/2% per month, which is an annual percentage rate of 18%

3. MERCHANTS

This Agreement shall be deemed an agreement between merchants as the terms is defined in the Oregon Commercial Code. THIS IS AN ORDER AND NOT A FINAL BILLING.

4. DUTY TO INSPECT ON DELIVERY

Buyer shall inspect the trees immediately on arrival, and within 24 hours after delivery. Buyer shall give notice to Seller at Seller's Aurora, Oregon office by telephone and by certified mail, return receipt requested, of any claim for damages on account of condition, grade, quality, or quantity of the trees, and Buyer must specify the basis of Buyer's claim in detail. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of goods by Buyer. If Buyer shall fail to give such notice, the goods shall be deemed to conform with the terms of the contract, and Buyer shall be bound to accept and pay for same in accordance with the terms of the contract. Buyer expressly waives any right Buyer may have to revoke acceptance after the expiration of said 24 hour period. The use of sale of the trees, without giving any written notice of rejection as required by the Agreement, shall be deemed and construed as an acceptance of the trees and as conclusive evidence that the trees are as represented.

5. FAILURE TO DELAY IN DELIVERY

Seller shall not be liable for any failure or delay in the delivery and shipment of the trees or for any damage suffered by Buyer by reason of such delay, when such delay is, directly or indirectly, caused by, or in any manner arises from road conditions, fires, floods, accidents, carrier difficulties, transportation delays, acts of God or any other cause or causes beyond Seller's control.

6. VARIANCE

Seller reserves the right to increase or decrease this order up to and including 10 % for quantity and 20 % for sizes of trees and a three (3) day variance as to shipping and /or arrival date.

7. DELIVERY AND RISK OF LOSS

Deliveries and risk of loss shall be made according to the Sales Order Form executed by the parties. If there is no Sales Order Form or other agreement between the parties, then delivery shall be the sole responsibility of Buyer and risk of loss, injury, or destruction of goods shall pass to Buyer when the trees are delivered to the carrier, and any such loss, injury or destruction shall not release Buyer from any obligation to pay for the trees.

8. LIMITATION OF SELLER'S LIABILITY

Seller shall not be liable to Buyer hereunder, whether in contract, in tort or otherwise, for any damage in excess of the purchase price of the goods with respect to which such damage is claimed. Seller shall not be liable to Buyer for incidental or consequential damages, specifically including but not limited to loss of profits, and Buyer hereby waives any and all claim for such damages. Any federal, state, and local sales, use or excise taxes required to be paid on account of this sale are the responsibility of the Buyer and are in addition to the contract price.

9. DISCLAIMER WARRANTIES

Seller expressly warrants that all trees sold hereunder are true to name. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE. THIS SALE IS MADE ON THE EXPRESS UNDERSTANDING THAT THERE IS NO IMPLIED WARRANTY THAT THE GOODS SHALL BE MERCHANTABILITY OR AN IMPLIED WARRANTY THAT THE GOODS SHALL BE FIT FOR ANY PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT HE IS NOT RELYING ON SELLER'S SKILL OR JUDGEMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES THAT EXTEND BEYOND THAT DESCRIPTION ON THE FACE HEREOF. THIS PROVISION SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER. THIS SALE TRANSACTION IS STRICTLY ON AN "AS IS" BASIS. Any affirmation of fact or promise made by the Seller shall not be deemed to create an express warranty that the goods shall conform to the affirmation or promise; any description of the goods is for the sole purpose of identifying them and shall not be deemed to create an express warranty that the goods shall conform to such description; any sample or model is for illustrative purposes only and shall not be deemed to create an express warranty that the goods shall conform to the sample or model and no affirmation or promise or description, or sample or model shall be deemed part of the basis of the bargain.

10. OREGON PRODUCTS

The terms and provisions of the Agreement shall be interpreted under Oregon Law. The products listed on this invoice are Oregon products delivered for sale in Oregon and other states, therefore Buyer consents and agrees that any action brought on this Agreement shall be commenced and completed in Clackamas County Oregon, and by signing this Agreement Buyer waives any right Buyer may have to have proceedings brought in any other state.

11. DEFAULT AND REMEDIES

In the event of a breach by Buyer, as that term is defined in the Oregon Commercial Code, Seller shall be entitled to all the remedies provided therein including the right of resale, and Buyer shall be liable for any deficiency on such resale in addition to any incidental damages sustained by Seller, Buyer acknowledges and understands that Christmas trees are perishable and will have no market value after the 23rd day of December of each year, therefore, immediate resale is imperative, and Buyer hereby waives notice of resale.

12. MODIFICATION

No modification or amendment of this contract or any covenant, condition or limitation herein contained shall be valid unless the same is in writing and signed by both parties. The parties agree that their transactions may from time to time be amended by facsimile transmission. In the event that facsimile transactions are used to conduct business and make modifications the parties agree that any and all signatures, even though not the original, shall bind the signing party and his or her company or business.

13. COMMERCIAL PURPOSES

Buyer covenants that the goods purchased hereunder are not bought for personal, family or household purposes, but are bought for commercial or business purposes. Seller makes no warranties, express or implied, including the warranty of merchantability and fitness for a particular use or purpose, to consumers, as defined by the Magnuson-Moss Warranty Trade Commission Improvement Act, that may eventually purchase the goods from Buyer.

14. ATTORNEY AND COLLECTION AGENCY FEES

If Buyer fails to pay the purchase price in full within 30 days following due date of invoice and this contract is placed in the hands of an attorney or collection agency for collection, Buyer agrees to pay Seller reasonable attorney's fee and collection agency fees and collection costs even though no action or suit is filed thereon.

Buyer agrees to all terms and conditions listed above:

Buyers Signature _____