

THE SCOTTS COMPANY

PRO Americas Terms and Conditions of Sale

OFFER TO SELL/ TERMS:

The party to whom products are being sold is hereinafter referred to as "Customer" and The Scotts Company (selling PRO products) as "Scotts". Scotts' price lists, as revised from time to time, and these terms and conditions of sale (hereinafter "The Scotts Company PRO Americas Terms and Conditions of Sale") constitute Scotts' offer to sell to approved Scotts' Customers in the United States, including Puerto Rico and Canada, at the prices and on the terms and conditions therein and herein contained. Scotts from time to time offers merchandising assistance, materials and payments to all professional horticulture distributors. For details on current programs, please contact your regional sales representative or write to: The Scotts Company, 14111 Scottslawn Road, Marysville, Ohio 43041 USA. By placing its order with Scotts either orally, in writing, via facsimile or via EDI, a Customer will be deemed to have accepted such terms. Customer is hereby notified that this offer is expressly limited to its terms and conditions and no additional or different terms of Customer's, whether appearing on its order form or otherwise modify these Scotts terms and conditions. If these terms and conditions are not acceptable to you, notify us within ten (10) days after date hereof. Your failure to so notify us or your acceptance of delivery of our products shall constitute acceptance by you of The Scotts Company PRO Americas Terms and Conditions of Sale.

EFFECTIVE DATE:

Price List Date, subject to change without notice. Supersedes all previously published price lists.

PRICING POLICY:

All prices subject to change without notice. All orders will be invoiced at prices in effect at the time of the requested delivery date. In the event of a price increase orders received prior to the notice date of the price increase and for requested delivery date 45 days or less after the effective date of the price increase will be given the price in effect prior to the price increase.

TERMS OF PAYMENT:

Terms are based on order shipment/invoice date and are Net 45 days. All terms are extended subject to credit approval. Interest may be charged at the rate of 1½% per month (annual rate 18%) on all past due accounts. In the event Customer is determined by Scotts to be a credit risk; fails to promptly provide current Customer financial information upon request; or in the event of insolvency of Customer, sale of business, seizure of goods through legal process, credit terms will not be extended and any open invoices will become due and payable immediately. Scotts reserves the right to limit or refuse Customer's participation in promotional deals based on credit risk. Any action for breach of the terms of the contract resulting from Customer's acceptance of this offer must be commenced within one (1) year after the cause of action has occurred.

PRODUCTS:

Scotts products are not available in all markets. Consult your Scotts Distributor Account Manager for details. Scotts coated elements will be shipped only to specified blending sites. All sales of Scotts coated element products are subject to availability of stock on hand. If an order calls for an item, which is temporarily out of stock, the product may be cut from the order. Scotts does not automatically back order product cuts. In no event shall Customer deduct for any price allowance on the unfilled portion of any order. Scotts shall not be liable for delay or non-delivery caused by acts of God or the elements, strikes, slowdowns, raw material shortages, riot, fires, war conditions, accidents, acts of civil, military or government authorities, delays in transit, embargo, insufficient production or quantities on hand, or any like or unlike causes beyond its reasonable control. Scotts reserves the right to allocate product and product shipment. Inherent in the purchase of Scotts coated elements is Customer's agreement that these products are for use in building blended CRF products and there will be no reference to end users of Scotts brands. Customer agrees that the intended use of these products is not to displace Scotts Osmocote brands and violation of this agreement will be grounds for Scotts to terminate this purchase agreement.

ORDERS:

All orders should be transmitted via EDI or faxed to Scotts

Professional Customer Service (1-888-FAX-HORT). Acceptance of all orders is subject to Scotts' approval. Orders submitted must be complete and ready for processing. Scotts will not match or hold orders for any reason. Scotts Customer Service will determine product shipping locations. In peak, in-season shipping periods, allow three weeks for order processing and delivery. 24-hour advance notice must be given for all pick-ups.

MINIMUM ORDERS:

Full truckloads only.

Marysville Plant: 20 tons of PolyS® products

Charleston Plant: 20 tons of Resin Coated products

CHANGES TO ORDERS:

Because order changes are disruptive to business, no changes to orders will be permitted 72 hours prior to the requested delivery date or if orders are staged for shipment or the carrier has been notified. Customer pick-ups can not be changed 48 hours prior to the pre-arranged pick-up appointment. Pick-up appointments made but not kept will result in a missed appointment charge of \$100 per order charged to your account.

QUANTITY PRICES:

Prices listed are delivered in US dollars unless otherwise noted and are for full truckload shipments (@ 38,000-42,000 pounds). Products must ship in full pallets of single formulas.

FREIGHT:

Unless otherwise noted, products listed are stated as delivered pricing. Any charges for flatbed, demurrage, stopovers, drop shipments, mileage, driver assist charges, or other accessory charges, will be charged to the Customers account.

TAXES:

Any applicable sales, use, and excise taxes will be added to the purchase price and will be paid by the customer.

RETURN POLICY:

All returns must have prior written approval obtained from Scotts Professional Customer Service. Scotts will specify how and to what locations authorized returns are to be made. Appropriate freight and re-stocking charges will be invoiced to your account. Credit is issued after Scotts confirms receipt of product in saleable condition.

EXISTING CONTRACT & MODIFICATION:

If Customer's order was placed under an existing written contract between and signed by the parties, to the extent that such contract and Scotts' PRO Americas Terms and Conditions of Sale are inconsistent, such contract shall prevail. Except to the extent that there is a signed written contract between the parties, these Scotts' PRO Americas Terms and Conditions of Sale constitute the entire contract of the sale and purchase between the parties of the products covered hereby. No modification of this contract shall be of any force or effect unless in writing and signed by the party claimed to be bound thereby, and no modification shall be effected by the acknowledgment or acceptance of purchase order forms containing different conditions.

DISPUTE RESOLUTION & GOVERNING LAW:

Any controversy or claim arising from or relating to this contract, including fraud and breach of contract, shall be first submitted for non-binding mediation. Such mediation proceeding and any subsequent court proceeding shall be held in Marysville, Ohio, applying the laws of the State of Ohio. The mediator or other person presiding over such proceeding, in accordance with such rules, may make a determination and award, with or without written findings of fact or conclusion of law. Any such determination and award shall be non-binding upon the parties. Mediation as herein described shall be a condition precedent to either party seeking recourse in any judicial or other proceeding. This contract shall be governed by and construed under the Laws of the State of Ohio.

WARRANTIES & DAMAGES:

Scotts warrants to Customer that: (i) at the time of delivery, the products delivered hereunder shall conform in all material respects to the applicable Scotts product label; (ii) all products sold to Customer hereunder shall have been manufactured, packaged, stored and shipped in con-

formity with all applicable laws, regulations, rules, orders, judgments and decrees; (iii) title to all products sold hereunder shall pass to Customer as provided herein free and clear of any security interest, lien or other encumbrance; (iv) the products as received by Customer shall contain no contamination that adversely affects the quality, performance or safety of the products; and (v) Scotts' operations are in conformance with all applicable governmental laws, rules, regulations and orders. SCOTTS DOES NOT MAKE AND IS NOT TO BE HELD LIABLE FOR ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OF PURPOSE OR FOR ANY OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT. Scotts shall in no event be liable to Customer for special, incidental, consequential or punitive damages.

SEVERABILITY:

The provisions hereof are severable and, in the event any provision is held to be unenforceable, the remaining provisions will continue in full force and effect.

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