

Credit Application

PO BOX 930 MT. ANGEL, OR 97362

PH (503) 845-2283 FAX (503) 845-6557



Kraemer's
Nursery Inc.

General Information

Company Name _____ d.b.a. (if applicable) _____

Check all applicable Grower Wholesale Re-Wholesale Retail Broker Landscaper Other _____

Mailing Address _____

Street Address _____

Phone # _____ Fax # _____ Cell # _____

Email (1) _____ Email (2) _____

Type of Entity: S Corp Corporation LLC (Limited Liability Corp) Partnership Other _____

Date business formed: _____ Years in business under Current Trade Name _____

of Employees _____ Annual Sales Volume _____ Accounts Payable Contact _____

Tax ID No. _____ Uniform Business ID (UBI) No. _____ D-U-N-S No. _____

State(s) in which business is registered to do business: _____

Please list Authorized Buyers _____

Please list all Owners or Shareholders _____ (%) _____ (%)

_____ (%) _____ (%) _____ (%)

Have you declared bankruptcy in the past 7 years? Y / N If yes, when? _____

Under current business name? Y / N If no, under what business name? _____

Financial Information

Bank Name _____ Address _____

Account # _____ Account # _____

Phone # _____ Fax # _____ Contact: _____

References

Company	Address	Phone	Fax
1)	_____	_____	_____
2)	_____	_____	_____
3)	_____	_____	_____
4)	_____	_____	_____

Office Use Only | Reviewed by: _____

References requested/returned 1) _____ / _____ 2) _____ / _____ 3) _____ / _____ 4) _____ / _____

Credit Approved / Refused Date: _____ Comments _____

Limit _____ Terms _____ Discount _____ Sales Rep _____ Ship Via _____

PLEASE READ CAREFULLY - THE FOLLOWING TERMS AND CONDITIONS AFFECT YOUR LEGAL RIGHTS

1. Agreement: These Terms and Conditions ("**Terms**") are part of the complete agreement between Kraemer's Nursery, Inc. (hereinafter "**Seller**") and Buyer for all products, materials and services provided by Seller to Buyer for use in Buyer's business ("**Goods**"). The complete agreement between Buyer and Seller is the Credit Application, Seller's Invoice, and these Terms ("**Agreement**"). No other provisions inconsistent with the Agreement, including but not limited to, terms stated in Buyer's purchase order or confirmation, are part of the parties' agreement for the sale and purchase of Goods, without the prior written consent of Seller. These Terms supersede and cancel all prior communications between the parties, except as specifically shown on the face of these Terms. The parties agree that these Terms cannot be contradicted, supplemented or explained by evidence of course of performance, course of dealing or usage of trade. The parties agree that to the extent any part of these Terms calls for the delivery of services in addition to Goods, that the services provided are incidental to and supplement the primary purpose of providing the specified Goods.

2. Modification of Agreement: No conditions in the acceptance by Buyer and no subsequent agreements or communications in any way altering the Agreement shall be binding unless made in writing and signed by an agent or authorized representative of the Seller.

3. Ownership and Risk of Loss: All Goods are F.O.B. Seller's Mt. Angel, Oregon location, unless otherwise specified in writing by Seller. Ownership and risk of loss to all Goods shall pass to Buyer upon tender of such Goods by Seller to a carrier for shipment or upon delivery and application by Seller as agreed.

4. Security Interest: Buyer hereby grants Seller a security interest in the Goods until Seller is fully paid. No Goods furnished by Seller will become a fixture by reason of attachment to real estate or other property. Buyer agrees to assist Seller in taking all necessary steps to perfect and maintain said security interest. This section is not intended to in any way limit or waive Seller's rights to enforce any other liens including agricultural produce liens, or additional remedies available under applicable law.

5. Payment: All invoiced amounts shall be paid by Buyer to Seller on the date specified on the invoice. Buyer agrees to examine each invoice immediately upon receipt and to inform Seller in a detailed written statement of any dispute as to amount or quality of the Goods or services on or within 10 days of the date of the invoice. Failure by Buyer to notify Seller in writing of any dispute shall constitute a waiver of any dispute by Buyer and shall constitute an admission by Buyer that all such amounts are reasonable, and acceptance by Buyer of the same. On any amount not timely paid, Seller may assess a late charge equal to the lesser of 1.5% interest per month, or the maximum rate permitted by law, on all accounts starting the first day after the due date on the invoice. All credit and deliveries may be suspended in the event any payment is 60 days past due. Seller reserves the right to cancel this Agreement at any time, to file liens or take any action allowable by law to collect delinquent payments if Seller has good faith belief that Buyer is insolvent or may become insolvent.

6. Acceptance: The Goods shall be deemed accepted by Buyer upon receipt, unless within 48 hours of delivery, Buyer rejects such Goods and notifies Seller in writing of the basis for such rejection. Seller, in its sole and exclusive discretion, may provide Buyer a refund or repair or replace any Good it deems defective.

7. INDEMNIFICATION: BUYER SHALL INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM ANY CLAIM, SUIT, DAMAGE, OR LOSS (INCLUDING, WITHOUT LIMITATION, ATTORNEY FEES) RESULTING FROM ANY ACT OR OMISSION OF BUYER, ITS AGENTS OR ASSIGNS, WITH RESPECT TO THE GOODS.

8. Governing Law and Jurisdiction: Seller and Buyer expressly agree that this Agreement shall be governed by and construed in accordance with the laws of Oregon, and that the exclusive forum for disputes arising out of or relating to this Agreement shall be the Marion County Circuit Court for the State of Oregon, and no other state or Federal Court. Each party consents to jurisdiction of such court, waives any objection to venue, and further agrees that in the event of litigation such party shall, at its own expense, provide discovery and appear for depositions in Marion County, Oregon.

9. LIMITATIONS OF LIABILITY: BUYER'S SOLE REMEDY FOR ANY AND ALL DAMAGE CAUSED BY, ARISING OUT OF, OR RELATING TO THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR BREACH OF ANY WARRANTY, EXPRESS OR IMPLIED, SHALL BE REFUND, REPAIR, OR REPLACEMENT. ALL ACTIONS OR CLAIMS, REGARDLESS OF FORM, ARISING OUT OF OR RELATING TO THE AGREEMENT MUST BE COMMENCED WITHIN 2 YEARS AFTER THE DATE OF THE INVOICE ISSUED BY SELLER.

10. DISCLAIMER OF IMPLIED WARRANTIES: SELLER HAS NOT GIVEN ANY EXPRESSED WARRANTIES OR PERFORMANCE GUARANTEES UNLESS THOSE PROMISES ARE IN WRITING CONTAINED IN THE AGREEMENT AND SPECIFICALLY TITLED WARRANTY OR PERFORMANCE GUARANTEE. SELLER SHALL HAVE NO LIABILITY, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, FOR ANY LOSS OF PROFIT OR USE, PROPERTY DAMAGE, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

11. Termination: Either party may terminate these Terms, by providing the other with 30 days prior written notice. Upon termination, all invoiced amounts shall be due by Buyer to Seller on or before the effective date of termination. In the event of termination, Seller and Buyer shall be relieved of all obligations hereunder, except (1) for Buyer's obligation to pay Seller for the total amount due and costs incurred as of the date of termination, including without limitation, all costs, expenses, and liabilities incurred by Seller as a result of such termination, including all attorney fees, and (2) unless expressly provided for otherwise herein.

12. Cancellation of Agreement/Default: If either party defaults in the performance of any obligation related to the Agreement, and fails to cure such default within 15 days of receiving written notice of the default, the non-defaulting party may cancel the Agreement. If Seller forms a good faith belief that Buyer is insolvent and Buyer does not offer Seller reasonable assurances of its solvency within 3 days of receipt of such demand from Seller, the Agreement may be cancelled by Seller. Upon cancellation or termination, Seller shall, in addition to any other rights, have any and all marshalling or reclamation rights provided by law.

13. Force Majeure: The parties hereby agree that failure to perform any provision, representation or warranty due to an event of Force Majeure shall not cause such failing party to be in default of the Agreement. Force Majeure shall mean an occurrence beyond the reasonable control of the party affected including, but not limited to, acts of God or the public enemy, terrorism, forces, explosions, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, or without limiting the foregoing circumstances, any circumstances of like or different character beyond the reasonable control of the party so failing; or interruption of or delay in transportation, inadequacy, shortage, excessive cost or failure of supply of energy or raw materials, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within said party's power to concede; or compliance by either party with any order, action, direction or request of any governmental officer, department, agency, authority or committee thereof.

14. Taxes: Taxes are the responsibility of the Buyer and all prices quoted do not include any taxes or charges, unless specified as such.

15. Setoff: Buyer shall not be entitled to setoff any amounts due to Buyer against any amounts due to Seller pursuant to the Agreement.

16. Waiver: No waiver of any provision of the Agreement or any rights or obligations of either party shall be effective except pursuant to a written instrument signed by the party or parties waiving compliance. A waiver shall only be limited to the specific instance and for the specific purpose stated in writing.

17. Severability: If any provision of the Agreement is determined to be illegal or unenforceable, the validity of the remaining provisions hereof shall not be affected thereby; and such illegal or unenforceable provision shall be deemed modified to the minimum extent necessary to make it consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

18. Binding Effect: The Agreement is binding and inure to the parties' benefit of its heirs, representatives, and successors.

19. Attorney Fees: If any claim, suit or proceeding ("**Action**") is instituted, which arises out of or related to the Agreement, the prevailing party shall recover, in addition to costs, reasonable attorney fees incurred in preparation, prosecution or defense of such Action, as determined by the court, and if appealed, such reasonable attorney fees as determined on appeal. In the event that Seller incurs any costs or fees, including but not limited to attorney fees, in the collection of any sums owing to Seller from Buyer, Buyer agrees to pay Seller's reasonable attorney fees, costs and expenses, whether or not any Action is commenced. Seller further agrees that interest in the amount specified in Section 5 above shall be applied to any unpaid collection costs incurred by Seller within 30 days after mailing of the demand or invoice for payment of such by Seller.

20. Notices: All notices between the parties shall be in writing and deemed effective upon personal delivery, or upon receipt by facsimile or by certified or overnight mail, to the addresses or facsimile numbers shown on the Credit Application or Invoice.

21. Survival: Provisions 7-10 and 16-19 above, and the Personal Guaranty and Authorization for Release of Credit Information contained on the Credit Application, shall survive termination of the Agreement.