

ACCOUNT # _____

ACCOUNT CREDIT APPLICATION

SALES REPRESENTATIVE PORTION

NAME DENDROLOGICAL SALES / LYNX ASSOCIATES – DAN FLOTTERUD

STREET ADDRESS 1322 BOAT RUN LANE

CITY, STATE, ZIP NEW RICHMOND, OHIO 45157

COUNTY

SALES REP: **DAN FLOTTERUD F:888-396-8733**

SALES REP SIGNATURE

Van Meter and Son Nursery Inc
9720 SE 362nd Avenue Boring, OR 97009
 Nursery Tel: (503) 668-5000 □ Fax: (503) 668-6600
 Dan's Phone: 612-867-5728 or 888-383-8733
 102 Woodridge Drive Canon Falls, MN 55009

Email: dflotterud@aol.com Web: Dansplants.com
 Fax: 888-396-8733

APPLICANT PORTION

FOR PURPOSES OF ESTABLISHING OPEN ACCOUNT CREDIT TERMS WITH VAN METER & SON NURSERY, INC. THE UNDERSIGNED FURNISHES THE FOLLOWING INFORMATION

FIRM NAME		DBA	
BILL TO ADDRESS	CITY	STATE	ZIPCODE
RETAIL OUTLET(SHIP TO) ADDRESS	CITY	STATE	ZIPCODE
RETAIL OUTLET(SHIP TO) ADDRESS	CITY	STATE	ZIPCODE
TELEPHONE	FAX	IF NEW BUSINESS, AMOUNT OF BEGINNING CAPITAL AND SOURCE	
EMAIL ADDRESS	YEARS IN BUSINESS	HOW LONG AT THIS LOCATION	TYPE OF BUSINESS <input type="checkbox"/> PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION
OWNER OR PRINCIPAL STOCKHOLDER	TITLE	SPOUSE'S NAME	
HOME ADDRESS	CITY	STATE	ZIPCODE
HOME PHONE	BUSINESS PHONE	BUSINESS FAX	FEIN
OTHER PRINCIPAL/OFFICERS (NAMES & TITLES)			

→ BANK REFERENCES

BANK NAME	BANK BRANCH	CITY & STATE	BANK OFFICER	PHONE

→ TRADE REFERENCES (NURSERY COMPANIES) FULL ADDRESS AND PHONE NUMBERS

FIRM NAME	ADDRESS	PHONE	FAX NUMBER	ACCOUNT NUMBER

Terms & Conditions IMPORTANT CONTRACT TERMS – TERMS AND CONDITIONS ATTACHED

IT IS AGREED BY THE UNDERSIGNED THAT: (1) PAYMENT FOR ALL GOODS AND MERCHANDISE SOLD ON OPEN ACCOUNT WILL BE DUE AND PAYABLE WITHIN THIRTY (30) DAYS FROM THE DATE OF INVOICE OR PER OTHER AGREED TERMS; (2) ANY SUMS NOT PAID WITHIN THE TERMS OR OTHER AGREED TERMS ARE SUBJECT TO A SERVICE CHARGE OF ONE AND ONE-HALF PERCENT (1.5%) PER MONTH 18% ANNUM; (3) APPLICANT HAS READ, UNDERSTANDS, AND AGREES TO THE TERMS AND CONDITIONS PROVIDED WITH THIS APPLICATION, INCLUDING THE PAYMENT OF ANY COSTS, EXPENSES AND REASONABLE ATTORNEY'S FEES VAN METER & SON NURSERY, INC. MAY INCUR IN ANY MANNER OF COLLECTION OF ANY SUMS PAST DUE AS OPEN ACCOUNT CREDIT EXTENDED.

THE UNDERSIGNED AUTHORIZES AND RELEASES ALL BANKS, PERSONS AND COMPANIES LISTED ON THIS APPLICATION TO FURNISH INFORMATION AND AUTHORIZES THE CHECKING OF CREDIT.

THE UNDERSIGNED CERTIFIES THAT THIS ACCOUNT APPLICATION IS MADE ON BEHALF OF THE APPLICANT SHOWN HEREIN ABOVE FOR THE PURPOSE OF SECURING OPEN ACCOUNT TERMS OF CREDIT FROM VAN METER & SON NURSERY, INC. ON THE BASIS OF THIS ACCOUNT APPLICATION AND THE FINANCIAL DATA WHICH IS SUBMITTED HEREWITH, AND THE UNDERSIGNED FURTHER CERTIFIES THAT THE CONTENTS HEREOF AND THE FINANCIAL DATA WHICH IS SUBMITTED HEREWITH ACCURATELY REPRESENTS THE FINANCIAL CONDITION, WITHOUT MATERIAL CHANGE, OF THE APPLICANT TO THIS DATE.

DATE: _____, 200_____

SIGNATURE OF INDIVIDUAL OR NAME OF CORPORATION
 PARTNERSHIP OR OTHER

THIS AGREEMENT SHALL HAVE NO FORCE OR AFFECT
 UNTIL APPROVED BY VAN METER & SON NURSERY, INC.

BY: _____

PLEASE READ CAREFULLY

THE FOLLOWING TERMS AND CONDITIONS AFFECTS YOUR LEGAL RIGHTS

1. Agreement: These Terms and Conditions (hereinafter "Terms") are part of the complete Agreement between Van Meter & Son Nursery, Inc. (hereinafter "Seller") and Buyer and/or Buyer's financing company for all nursery stock or other products provided by Seller to Buyer ("Goods"). The complete Agreement between Buyer and Seller is the Seller's Invoice, Acknowledgement and these Terms. No other terms and conditions, modifications, or amendments inconsistent with the Invoice, Acknowledgment and these terms and conditions, including, but not limited to, terms stated in Buyer's purchase order, order form, confirmation or other similar forms, are part of the parties' Agreement for the sale and purchase of such 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. Furthermore, 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.

2. Modification of Agreement: No conditions in the acceptance by Seller and no subsequent agreements or communications in any way modifying, adding to, superseding or otherwise altering this 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 Boring, Oregon nursery, 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. Buyer shall be liable for all costs of shipping and handling.

4. Security Interest: Buyer hereby grants Seller an agricultural 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, pursuant to applicable state and federal law, and to protect Seller's interest by adequately insuring the goods against loss or damage with Buyer as named insured or co-insured. This security interest is in addition to, and does not waive or supersede any statutory lien rights available to Seller under applicable state and federal law.

5. Payment: All invoiced amounts shall be paid by Buyer to Seller on the date specified on the invoice. On any amount not timely paid, Seller may assess a late charge equal to the lesser of one and a half percent (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 additional deliveries shall be suspended in the event any payment is thirty (30) days past due. Seller reserves the right to cancel this Agreement, 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 forty-eight (48) hours of delivery, Buyer rejects such goods and notifies Seller of the basis for such rejection. A detailed, written claim, including photographic evidence, must be submitted to Seller within ten (10) days of delivery. Seller, in its sole and exclusive discretion, may provide Buyer a refund or repair or replace any goods 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 ANY GOODS PURCHASED HEREUNDER, 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 THIS AGREEMENT MUST BE COMMENCED WITHIN TWO (2) YEARS AFTER THE DATE OF THE INVOICE ISSUED BY SELLER.

10. DISCLAIMER OF IMPLIED WARRANTIES: SELLER HAS NOT GIVEN ANY EXPRESS WARRANTIES OR PERFORMANCE GUARANTEES UNLESS THOSE PROMISES ARE IN WRITING, CONTAINED IN THIS 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: Neither party may terminate this Agreement, except by providing the other party with twenty (20) 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, 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 this Agreement, and fails to cure such default within fifteen (15) days of receiving written notice of the default, the non-defaulting party may cancel this Agreement. If Seller forms a good faith belief that Buyer is insolvent and Buyer does not offer Seller reasonable assurances of its solvency within three (3) days of receipt of such demand from Seller, this Agreement may be cancelled by Seller. Upon cancellation or termination, Seller shall, in addition to any other rights, have any and all marshalling rights provided by law.

13. Time for Performance: Timely performance by Seller is contingent upon Buyer paying any sums when due and supplying to Seller in a timely manner, upon Seller's request, all required technical information, including but not limited to species types and quantities, and all required commercial documentation.

14. Force Majeure: The parties hereby agree that failure to perform any provision, representation or warranty contained in this Agreement due to an event of Force Majeure shall not cause such failing party to be in default of this Agreement. Force Majeure shall mean an occurrence beyond the reasonable control of the party affected including, but not limited to, bug infestation or disease, 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.

15. Taxes: Taxes are the responsibility of the Buyer and all prices quoted do not include any duties, sales, use, excise, value-added, or other taxes or charges, unless specified as such.

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

17. Waiver: No waiver of any provision of this 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. Any waiver shall only be limited to the specific instance and for the specific purpose stated in writing.

18. Severability: If any provision of this 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.

19. Binding Effect: The provisions of this Agreement are binding and inure to the parties' benefit of the heirs, representatives, and successors.

20. Attorney's Fees: If any claim, suit or action is instituted, which arises out of or related to this Agreement, the prevailing party shall recover, in addition to costs, reasonable attorney fees incurred in preparation, prosecution or defense of such suit, or action as determined by the court, and if appealed, such reasonable attorney fees as determined on appeal. In addition, in the event that Seller

retains an attorney for the collection of any sums owing to Seller from Buyer under the terms of this Agreement, Buyer agrees to pay Seller's reasonable attorney fees, costs and expenses whether or not any suit or action is commenced.

21. Notices: All notices under this Agreement shall be in writing and shall be 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 front of this Agreement or invoice.

22. Survival: The parties agree that all Buyer's obligations under this Agreement shall survive termination, including but not limited to provisions 4, 5, 7, 8, 9, 10, 16, 17, 18, 19 and 20.