



Master Sales Agreement (MSA) for Grapevine Nursery Stock

PARTIES & GOODS: This Master Sales Agreement (“**Agreement**”) is entered into between **Inland Desert Nursery, Inc.** (“**Seller**”) and **Inland Desert | MB's Acct # 2979** (“**Buyer**”), (collectively referred to as “**Parties**”), regarding the sale of goods and services. From time to time during the term of this Agreement, Buyer may desire to purchase goods or services from Seller pursuant to the terms specified in this Agreement. Should Buyer desire to purchase goods or services from Seller, Buyer will execute a separate purchase agreement in the form of a (“**Contract**”). By executing a Contract, Buyer agrees to be bound by the terms of this Agreement. To the extent the terms of the Contract and this Agreement conflict, the terms of this Agreement shall prevail.

1. **AVAILABILITY:** Seller's obligation to deliver plant materials (“**Product**”) in the stated quantities in the Contract is subject to the express condition of availability of such stock at the time of harvest, and Seller will attempt in good faith to grow Product in quantities as close as possible to the estimated yields. If actual yields are below the estimated quantities for any reason, Seller will determine in its sole discretion the amount of Product available for sale to Buyer and Buyer will accept such Product and pay the price per unit actually delivered. This shall apply to each variety, selection or lot on an individual basis and availability or unavailability of certain varieties, selections or lots shall not relieve Buyer from any of its obligations hereunder. If there is a Product shortage, Seller may substitute #2 grade vines to fulfill a Contract. Seller cannot determine final grade and size of vines until delivery. Seller will extend a 10% price discount if substituted on any # 2 grade vines assigned to the Contract.

Buyer's Initials: _____

2. **PAYMENTS & DEPOSITS:** Unless otherwise specified in the Contract, a deposit of fifty-percent (50%) of the Product price (“**Deposit**”) is due by the Confirmation Date. The remaining balance is due after delivery and within 30 days of the date of the final invoice. A final invoice will be sent to Buyer after all items on Contract have been delivered to Buyer. All past due amounts shall accrue interest (compounded monthly) from the date due until paid, at the rate equal to the lesser of (a) the maximum amount allowed by law, or (b) 1% per month). Upon determination that Seller is unable to supply a full Contract for any reason (including crop failures or other events of force majeure), Buyer shall receive a proportionate refund of the Deposit unless Buyer elects to apply such amount to the remaining balance due on the final invoice of Contract, or as a Deposit for future Contracts. Prior to acceptance, a Contract may only be canceled upon written approval of Seller. If Seller approves the cancellation of an Contract, unless otherwise agreed in writing by Seller, Seller may retain the entire Deposit; provided that if Seller is able to resell the Products from a canceled Contract, Seller may refund the portion of the Deposit to Buyer less any costs incurred by Seller and sales price difference.

Buyer's Initials: _____

3. **DELIVERY & STORAGE:** The Parties estimate that the Product will be ready for delivery on or before the “**Target Delivery Date**” specified in the Contract. The Target Delivery Date is an approximation only, and Seller shall not incur any liability for failure to deliver on or before such date. Seller reserves the right to tender delivery of the Products in installments or separate lots. Unless otherwise specified herein, the Total Contract Price is F.O.B. Seller's nursery site or storage facility. Buyer must provide Seller with a written request to initiate shipping. While the actual delivery date cannot be guaranteed by Seller, Seller will attempt to meet the requested delivery date; provided that Seller receives from Buyer a minimum of 14 days advance notice for dormant vines, and 30 days for green-potted vines. Contracts will be rounded up to required increments. Bundles will not be broken. The only exception is the need for replacements from vines that failed to grow from the prior year's planting.

To compensate Seller for continued holding and storage expenses of dormant vine Contracts, commencing on **July 1st** and on the **first (1st) day of each week thereafter**, Buyer will pay Seller **\$0.03 per plant per week** that is not shipped from Seller's nursery site/storage facility. Said fees will be due within thirty (30) days of invoice and will bear interest as set forth in Section 2 above for other late payments under this Agreement. Storage fees for green-potted vines will commence 30 days post communication of their shadehouse transition.

Buyer's Initials: _____

4. **CLAIMS, RETURNS & REPLACEMENT POLICY:** Buyer may reject or revoke its acceptance of the Products delivered only if the nonconformity in such Products is substantial. Nonconformity means Products that are clearly unplantable due to defects (“**Nonconforming Products**”). No nonconformity or defect in any lot, installment or unit shall constitute grounds for claiming breach of the whole Agreement and any lots, installments or units not in dispute shall be paid for separately regardless

of dispute as to other deliveries or undelivered Products. Because the Product is perishable and subject to rapid deterioration if not properly cared for, Buyer must notify Seller in writing within 2 business days after receipt of the Products, If Buyer does not give Seller such notice, including an explanation of the basis of its claim and return such claimed Nonconforming Product to Seller within the 2 day period, Buyer shall be deemed to have irrevocably accepted the Products and receipt of the Contract. As soon as practicable, Seller will remedy any shortage in quantity, to the extent feasible pursuant to Section 1 (**AVAILABILITY**). With respect to nonconforming Products, Seller will either: (a) replace at its expense such original Products F.O.B. point of shipment to Buyer; or, at its option, (b) refund the original purchase price of such Products less any freight paid by Seller.

RETURN POLICY: Except for Nonconforming Products (defined Section 6 below), Buyer requests for Product returns are within the sole and absolute discretion of Seller. If Seller agrees to accept Product returns, (a) Products must be in the same condition as when delivered, and in full, undisturbed bundles and (b) Buyer, at or before the time of return, must pay all restocking fees imposed by Seller on Buyer as a condition to the return.

REPLACEMENT POLICY: With respect to dormant vines that fail to grow altogether, Seller will replace at no charge up to 5% of the quantity loss. Replacement vines are only available if Buyer notifies Seller of loss in writing no later than August 1st following planting, and plants no later than April 30th; and provided further, that all other terms of this Agreement have been met. BUYER AGREES THAT "GREEN-POTTED" or "MIST-PROPAGATED" VINES ARE SOLD AS-IS IN GOOD LIVE CONDITION AND NO CREDIT SHALL BE PROVIDED UNDER ANY CIRCUMSTANCES.

SELLER'S LIABILITY UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS BY BUYER.

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5. **ASSESSMENT:** A 5% Washington State Department of Agriculture assessment not to exceed \$.10 per vine will be charged to Buyer to support the foundation vineyard at W.S.U. and other grapevine improvement projects recommended by the Grapevine Advisory Committee. Seller may charge and collect from Buyer other applicable fees, assessments and royalties as may be in effect on the delivery date of the Products.

6. **FORCE MAJEURE:** Any failure or delay in the performance by Seller of its obligations hereunder shall not be a breach of this Agreement if such failure or delay arises out of or results from any cause beyond Seller's reasonable control, including any fire, frost, drought, crop conditions, casualty, explosion, error in count, strike or other difference with workmen, shortage of utility, facility, material or labor, delay in transportation, breakdown or accident, compliance with or other actions taken to carry out the intent and purpose of any law or regulation.

7. **WARRANTY DISCLAIMER/LIMITATION OF LIABILITY:**

NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND APPLY TO THE PRODUCTS THAT ARE THE SUBJECT OF THIS AGREEMENT. ALL PRODUCTS ARE PROVIDED "**AS IS**" AND "**WITH ALL FAULTS**". SELLER HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS AND WARRANTIES (A) OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND (B) AS TO THE DESCRIPTION, QUALITY, PURITY, GENETIC STABILITY, PRODUCTIVENESS, FREEDOM FROM ANY DISEASE, INSECTS, PATHOGEN OR VIRUS, OTHER LATENT DEFECT OR ANY OTHER MATTER RELATING TO THE PRODUCTS. PRIOR EXHIBITION OR PROVISION OF PRODUCT SAMPLES, MODELS OR PICTURES OF PRODUCTS SHALL NOT CREATE AN EXPRESS OR IMPLIED WARRANTY THAT THE PRODUCTS BEING PROVIDED WILL CONFORM TO SUCH SAMPLES, MODELS OR PICTURES.

SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, ECONOMIC LOSS, LOST PROFITS, GROWING COSTS, INSPECTION, TRANSPORTATION AND OTHER SERVICES AND EXPENSES RELATING TO THE PRODUCTS PROVIDED, HOWEVER CAUSED, INCLUDING EVENTS OF MISDESCRIPTION, INADEQUACY OR FAILURE OF THE PRODUCTS. ANY LIABILITY THAT MAY BE DETERMINED SHALL BE LIMITED TO AN AMOUNT THAT DOES NOT EXCEED THE PRICE PAID BY THE BUYER FOR THE GOODS AND SERVICES ALLEGED TO BE DEFECTIVE.

Buyer's Initials: _____

8. **INDEMNIFICATION.** Buyer hereby releases and will defend, hold harmless, and indemnify Seller, and/or its subsidiaries, affiliates, directors, officers, employees, agents, successors and assigns, from and against any allegation or claim based on, or any loss, damage, settlement, cost, expense and any other liability (including but not limited to reasonable attorneys' fees, arising from the use, planting or resale of the Products.

9. **LIMITED LICENSE:** The price of some of the Products purchased by Buyer may include a plant patent and/or trademark royalty. In exchange for those royalty payments, Seller grants to Buyer a limited, non-exclusive license to use the Product for the sole purpose of growing, harvesting and selling the crop obtained from the plant. This license does not include the right to propagate the plant in any manner, for any purpose.

10. **DEFAULT, DISPUTES AND VENUE:** If Buyer becomes insolvent or has any bankruptcy or reorganization proceeding filed by or against it or fails to perform any other obligation imposed herein or by law, Buyer shall be in default and Seller may immediately enforce any and all of the remedies available at law or equity, including cancellation of any Contract or Agreement. Buyer agrees that Seller retains a security interest in any and all Products until all terms of this Agreement are satisfied. This Agreement is governed by Washington law, excluding its conflicts of law rules. Buyer irrevocably submits to venue and exclusive personal jurisdiction in the federal and state courts in Benton County, Washington, for any dispute arising out of this Agreement, and waives all objections to jurisdiction and venue of such courts. If any action or proceeding, at law or in equity, is commenced or instituted to enforce or interpret any of provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert fees, costs of suit, and expenses, in addition to any other relief to which such prevailing party may be entitled. Notwithstanding any applicable statute of limitations, the parties agree that any action for breach of this Agreement must be commenced within 3 years after the underlying cause of action has occurred.

11. **GENERAL:** This Agreement and the Contracts constitute the complete and final agreement of the Parties and supersede the parties' prior agreements, understandings and discussions relating to the subject matter hereof. Acceptance of all terms and conditions of this Agreement is indicated by the signature of Buyer, below, or acceptance of delivery of the Products described in the Contract. This Agreement may not be amended or supplemented without further written agreement signed by authorized representatives of both parties. A party does not waive any right under this Agreement by failing to insist on compliance with any of the terms of this Agreement or by failing to exercise any right hereunder. Any waivers granted hereunder are effective only if recorded in a writing signed by the party granting such waiver. This Agreement cannot be assigned by Buyer without the prior written consent of Seller. If any portion of this Agreement is deemed to be invalid or is found to have been changed, modified or waived, the remainder of the agreement remains in full force and effect. This Agreement may be executed by facsimile or scanned electronic file and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument. The section headings of this Agreement are for convenience only and have no interpretive value. THIS IS A CONTRACT. DISCLAIMER OF WARRANTIES AND OTHER IMPORTANT CONTRACT TERMS ARE AN INTEGRAL PART OF THIS AGREEMENT.

This is a Sales Agreement between Buyer and Seller and all Contracts taken by agents are subject to confirmation through the business office of Inland Desert Nursery, Inc., in Benton City Washington. The parties may use standard business forms or other communications, but use of such forms is for convenience only and does not alter the provisions of this Agreement. NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED VERBALLY OR IN ANY QUOTATION, INVOICE, SHIPPING DOCUMENT, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE, OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.

I have read and accept the terms and conditions contained in this Agreement:

Seller: Inland Desert Nursery, Inc.

Buyer: Inland Desert | MB's Acct # 2979

By:  _____

By: _____

Title: **Sales Director** Date: **9/14/2023**

Title: _____ Date: _____