



Ball Horticultural Company
622 Town Road
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USA
ballhort.com

Provisions / Terms Accepted By Customer Upon Receipt of Ball FloraPlant® and Darwin Perennials® Plant Material

PLEASE READ THIS FLOWERING ONLY TERMS AND CONDITIONS OF SALE AGREEMENT BEFORE ACCEPTING ORDERS AND USING CUTTINGS OF BALL FLORAPLANT AND DARWIN PERNNIALS PLANT MATERIAL. By accepting said orders and/or opening the box(es) of BFP and DP plants that you the customer, as shown on the shipping documents (hereinafter "Customer") receive, accept the FLOWERING ONLY TERMS AND CONDITIONS OF SALE AGREEMENT (hereinafter Agreement). If you do not wish to agree to the terms and conditions of this Agreement, promptly contact Royalty Administration International® (hereinafter "RAI®") in the U.S. at 1(800) 472-4724. RAI is a licensing agent of Ball Horticultural Company (hereinafter "Agent"). This Agreement is made between Ball Horticultural Company (hereinafter "Ball") and Customer.

Whereas, Ball is authorized and entitled to propagate products of its wholly owned varieties and those of breeders and/or patent owners of the plant varieties listed on Exhibit A to this Agreement (hereinafter "Flowering Only Varieties") found at <https://www.ballfloraplant.com/PlantProtection>; <https://www.darwinperennials.com/Legal/PlantProtection> and to enter into agreements concerning these Flowering Only Varieties. Whereas, Customer wishes to grow and sell "Finished Plants" of the Flowering Only Varieties listed on Exhibit A to this Agreement. As used herein, **the term "Finished Plants" means plants grown in a 3-in. (7.5cm) size pot/container or larger.** Now, therefore, in consideration of the promises and the mutual covenants of this Agreement, the parties agree as follows:

1. This Agreement supersedes any prior flowering only agreement, written or oral, between Ball and Customer relating in any way to the Flowering Only Varieties and the Finished Plants.
2. Ball hereby grants to Customer a non-exclusive right to grow and sell the Finished Plants of the Flowering Only Varieties that are delivered by Ball to Customer. Any and all growing to be performed by Customer under this Agreement must be for the purpose of producing and selling Finished Plants only within the **United States and Canada** (hereinafter "Territory"). The sale of unrooted or rooted cuttings of the Flowering Only Varieties to any other company or individual is strictly prohibited as is the export of the Flowering Only Varieties outside the Territory.
ALL FORMS OF PROPAGATION OF THE FLOWERING ONLY PRODUCTS OR FINISHED PLANTS ARE STRICTLY PROHIBITED
3. Customer is required to include Ball supplied/approved labels/tags with all Finished Plants of Flowering Only Varieties sold by Customer under this Agreement. Ball approved tag suppliers are: Westrock - ph (866) 448-8300, fax (800) 968-2598, email ordersubmission@westrock.com; MasterTag - ph (800) 253-0439, fax (800) 828-0003, email orders@mastertag.com. Customer is strictly prohibited from using Ball FloraPlant and Darwin Perennials label/tags and trademarks for any other purpose. Customer must contact Ball Horticultural Company at Lsaracino@ballhort.com if considering creating, printing, producing, or making plant tags, containers, or pots displaying Flowering Only Varieties product names and trademarks, images, or cultural information. All materials promoting Flowering Only Varieties to include tags must include the following as applicable:
1) full commercial name to include proper trademark (™ or ®); 2) full variety/cultivar name; 3) U.S. Plant Patent number or PPAF (Plant Patent Applied For) and/or U.S. Utility Patent number or PAF (Utility Patent Applied For) with the term "Propagation Prohibited"; and 4) Ball approved images.
4. Mutations:
 - a) If Customer finds, induces, observes, or discovers an Essentially Derived Variety (hereinafter "E.D.V.") such as any mutation or sport in any Flowering Only Varieties or Finished Plant, then Customer shall report the E.D.V. immediately to Ball or its Agent by registered letter. The letter shall include, at a minimum, the name for the Flowering Only Variety or Finished Plant from which the E.D.V. has been induced, observed or discovered, and a brief description of the E.D.V.
 - b) At the written request of the Ball/Agent, Customer shall immediately provide the Ball/Agent with sufficient material of the E.D.V.
 - c) Ball or the third party owner of the Flowering Only Variety (hereinafter "Third Party") if the Flowering Only Variety is the subject of a third party license agreement, shall own all right, title and interest in the E.D.V. Customer hereby assigns all right, title, and interest in the E.D.V. to Ball or Third Party, if applicable. Customer agrees to cooperate with Ball or Third Party by executing any documents Ball or Third Party may request in connection with the filing, prosecution, or maintenance of any intellectual property rights related to said E.D.V., including, but not limited to, any assignment documents.
5. Customer agrees that the Finished Plants of the Flowering Only Varieties produced by Customer under this Agreement will be marketed, sold, and/or transferred only under the product names, and trademarks where applicable, as listed on Exhibit A.
6. Customer agrees not to sell, loan, give, or otherwise make available to others Flowering Only Varieties, unrooted or rooted plants of the Flowering Only Varieties, or any form of Flowering Only Varieties for purposes of reproduction by any manner, means, or method whatsoever.
7. **Customer agrees to allow Ball or their representatives, including but not limited to RAI, to inspect and inventory, at any reasonable time, the Customer's premises and plantings to ensure compliance with this Agreement.**
8. Upon breach by the Customer of any terms and conditions of this Agreement, the rights granted to Customer under this Agreement shall terminate immediately. In the event of such termination of rights, Customer, agrees to destroy all plants, cuttings, buds, and other matter capable of reproduction of the Flowering Only Varieties and Finished Plants (hereinafter "Existing Plant Matter"), and all plants, cuttings, buds, and other matter capable of reproduction originating from the Existing Plant Matter. Ball may pursue all legal remedies available, to the fullest extent of the law for the recovery of all damages, including without limitation, incidental, consequential, punitive, statutory, and compensatory damages, lost profits, and all forms of injunctive relief.
9. This Agreement shall be governed by and construed under the laws of the state of Illinois. All parties expressly consent to and agree to venue for any legal action as being solely the state courts of Illinois or the United States District Courts in Illinois regardless of where this Agreement is executed, performable, or breached and regardless of any other applicable laws concerning venue. In any legal action arising out of this Agreement, or arising from infringement of Ball's rights, Ball is entitled to reasonable attorney fees and costs.
10. Customer may not assign this Agreement.
11. If any of the provisions of this Agreement are or become invalid or unenforceable, the remaining provisions shall be, and continue to be, fully in effect. Paragraphs 4c, 6 and 8-11 shall survive the termination of this Agreement.

Contact RAI at 1 (800) 472-4724 with any questions regarding this Agreement.

(Revised May 2024)