

# Terms and Conditions

**Pricing:** Prices in this catalog are intended for the wholesale nursery trade only and are subject to change without notice. All prices are F.O.B. (field site) Black Rock Trees, LLC. Prices do not include federal, state, or local taxes, which are the Buyer's sole responsibility. Buyer agrees that sales order acknowledgements are the complete and exclusive statement of agreement between the Buyer and the Seller and supersede any prior agreements between the parties. All B&B stock dug and held for future delivery or pick up is subject to a holding fee.

**Substitutions:** Should the exact size or grade ordered not be available, Black Rock Trees, LLC, reserves the right, without notice, to substitute one size or grade larger or smaller than ordered. If this is not acceptable, you must specify "NO SUBSTITUTION" at the time of order.

**Payment:** Net upon receipt of shipment unless credit has been established with Black Rock Trees, LLC. Black Rock Trees, LLC also accepts MasterCard and VISA for deposits and payment. For customers with established lines of credit, **payments are due 30 days from date of invoice.** For new customers desiring to open an account, please complete and return the enclosed application form prior to placing your initial order. A \$2000 minimum initial purchase is required to open an account. Overdue accounts will be subject to a 2.0% per month (24% per annum) service charge on the unpaid balance.

If Buyer becomes insolvent, fails to make any payment within the prescribed time, or fails to perform any other term or condition of this contract or as may be required by law, Buyer shall be in default and Seller may pursue any remedy provided within this contract, by law, and/or in equity. Buyer agrees that it will pay any and all collection costs incurred by Seller. In the event legal action is instituted to enforce this contract, the prevailing party shall be entitled to recover from the losing party such sums as the court or arbitrator may deem reasonable for attorney's fees, costs and other expenses of trial or arbitration.

**Warranties and Seller's Liability:** Seller warrants its plant materials are of varieties true to name. Upon proof to Seller's satisfaction that the plant materials delivered to Buyer are not of the varieties described as acknowledged, Seller, at its sole discretion, will either replace such plant materials or refund the purchase prices as it relates thereto.

Buyer must submit, in writing, to Seller any claims concerning incorrect counts, sizes or varieties within 10 days (for claims relating to mortality, 30 days). This warranty does not apply to plant material damaged or injured during shipments on contracted carriers, or due to the Buyers negligence, improper care, unreasonable use or abuse. **Under no circumstances shall Seller be liable for any amount greater than the original purchase price. Claims will only be considered when payment has been made in full.**

The forgoing warranty is in lieu of all other warranties, expressed or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose. Replacement of purchased plant materials is Buyer's exclusive remedy under this warranty and in no case shall Seller be responsible for consequential or special damages, regardless of whether the problems or defects are discoverable or latent. Shipment of replacement plant material is F.O.B. point of origin at the Seller's discretion.

**Contingencies:** Seller's order acceptance (order acknowledgement) and liability is subject to Seller's crop growing conditions. It is made with understanding that orders may be voided or modified by Seller should Seller be unable to perform any terms or conditions of the acknowledgement due to causes within or beyond Seller's control. These include, but are not limited to drought, flood, fire, frost, hail, errors in count, labor relations, government regulations and restrictions of any kind or the inability to obtain materials and supplies.

**Shipping: Shipments are F.O.B. (field site) our nursery and, therefore, travel at the risk and expense of the Buyer.** Where damage or delay occurs in shipment, claims are made to the transportation company immediately. All risk of loss or damage to plant material shall be upon the Buyer from and after delivery to a contracted carrier or to Buyer, whichever occurs first. Such cost shall not relieve Buyer from any obligation.

**Preliminary Lien Notice & Material Release:** Seller requires information as to: description of real property where product is being placed (address, legal description and parcel id number), developer (owner), general contractor, and lender on all job sites where Seller extends a credit account. Seller will issue a material release upon payment of account.