

KBW Horticultural Supply Terms & Conditions of Sale

EFFECTIVE DATE:

Price List Date, subject to change without notice. Supercedes all previously published price lists.

PRICING POLICY:

All prices subject to change without notice. All orders will be invoiced at prices in effect at the time of the requested delivery date.

BACKORDERS:

All sales of KBW products are subject to availability of stock on hand. If an order calls for an item, which is temporarily out of stock, the product will be backordered until such product is available. Please advise us if backorders will not be accepted. Backorders will be held no longer than 90 days.

CUSTOMER PICKUP:

\$1,000.00+ orders placed for "pick-up" qualify for a 2% discount.

DELIVERY:

Please check with our staff for current delivery schedule, minimums and charges for your area. Fuel surcharges will apply. UPS shipments: No minimum, \$2.50 handling charge added.

SPECIAL ORDERS:

Merchandise requested that is not normally stocked by KBW or is made to specification may require a deposit. Check with your sales representative for amount. Special orders are the sole property of the buyer.

FREIGHT CLAIMS:

KBW is not responsible for damaged merchandise shipped via UPS or common carrier. It is the responsibility of the customer to make claim with the freight company.

RETURNS:

Product returns will be accepted within three months of original shipment date. No material may be returned without prior authorization from our office. Returned material must be shipped prepaid. Material returned being defective will carry no restocking charge. Material returned otherwise will carry a 15% restocking charge. Please call us to arrange return of merchandise. Special order items or items made to specification cannot be returned due to their special nature.

TERMS OF PAYMENT:

Terms are based on order shipment/invoice date and are Net 30 days to approved accounts. All other accounts are C.O.D., C.W.O. or Mastercard/Visa. Payment by check must include drivers license number and

date of birth of the signer. No post-dated checks accepted. Temporary checks accepted for amounts \$100 and under. Checks with international addresses on U.S. banks are not accepted. Returned check fee \$30.00. Payment by credit card accepted at time of purchase only and will be subject to a 3% handling charge for orders totaling over \$1,000. All terms are extended subject to credit approval. Interest will be charged at the rate of 1-1/2% per month (annual rate 18%) on all past due accounts or the highest rate by law whichever is less. In the event the Customer is determined by KBW to be a credit risk; fails to promptly provide current Customer financial information upon request; or in the event of insolvency of Customer, sale of business, seizure of goods through legal process, credit terms will not be extended and any open invoices will become due and payable immediately. KBW reserves the right to limit or refuse Customer's participation in promotional deals based on credit risk. Any action for breach of the terms of the contract resulting from Customer's acceptance of this offer must be commenced within one (1) year after the cause of action has occurred.

DELINQUENT ACCOUNTS:

Accounts that are past due 60 days or more may ship C.O.D. without prior notification.

OFFER TO SELL/TERMS:

The party to whom products are being sold is hereinafter referred to as "Customer" and Kinney Bonded Warehouse as "KBW". KBW price lists, as revised from time to time, and these terms and conditions of sale constitute KBW's offer to sell at the prices and on the terms and conditions therein and herein contained. By placing its order with KBW either orally, in writing, via facsimile or via the Internet, a Customer will be deemed to have accepted such terms. Customer is hereby notified that this offer is expressly limited to its terms and conditions and no additional or different terms of Customer's, whether appearing on its order form or otherwise modify these KBW terms and conditions. If these terms and conditions are not acceptable to you, notify us within ten (10) days after date hereof. Your failure to so notify us or your acceptance of delivery of our products shall constitute acceptance by you of KBW's wholesale terms and conditions of sale.

GOVERNING LAWS:

These terms and conditions contained herein shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the KBW and Customer hereunder are performable and venue shall be established in Hidalgo County, Texas.

SEVERABILITY:

In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such shall not affect any other provision contained herein, and this document shall be construed as if such invalid, illegal, or unenforceable provision had never been included herein.

ATTORNEYS FEES:

Should KBW or Customer default in the performance of any of the terms, covenants, agreements or conditions contained herein and either places the enforcement of the terms hereof or the collection of amounts due, or to become due hereunder in the hands of an attorney, or files suit upon same, the defaulting party shall pay the non-defaulting party's reasonable attorney fees. In the event of litigation between KBW and Customer, the prevailing party shall be entitled to recover from the other party, reasonable attorney's fees.

PRIOR AGREEMENTS

SUPERCEDED:

These terms and conditions constitute the sole and only agreement of KBW and Customer and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this agreement.

AMENDMENT:

No amendment, modification, or alteration of the terms of this document shall be binding unless the same is in writing, dated subsequent to the date of this document and duly executed by KBW and Customer.

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