

PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance.** Foxland Harvestore, Inc. ("Purchaser") shall not be bound by any terms and conditions not appearing herein. Provision of the materials or services requested by Purchaser as indicated in this Purchase Order shall constitute a waiver by the person or entity providing such materials or services ("Supplier") of all terms and conditions contained in any other communications which are inconsistent with the terms and conditions set forth herein. IF SUPPLIER USES ITS OWN FORM TO ACCEPT OR CONFIRM THIS PURCHASE ORDER, IT IS UNDERSTOOD THAT ANY TERMS OR CONDITIONS THEREIN WHICH ARE IN ADDITION TO OR INCONSISTENT WITH THE TERMS OF THIS PURCHASE ORDER SHALL BE OF NO FORCE OR EFFECT.
2. **Price/Terms.** All materials or services provided by Supplier under this Purchase Order must be furnished at the price set forth in this Purchase Order. There shall be no interest charge or service charge on any past due invoice. Payment shall be made to Supplier within the later of thirty (30) days after receipt of an invoice or thirty (30) days after receipt by Purchaser of payment from the project owner. If payment from the project owner is not received by Purchaser, through no fault of Supplier, Purchaser will make payment to Supplier within a reasonable time. At Purchaser's request and as a condition to payment, Supplier shall provide lien waivers for itself and any subcontractors or suppliers for work that has been completed. Purchaser may offset or withhold amounts otherwise due to Supplier as may be reasonably necessary to protect Purchaser from loss or damage caused by Supplier's failure to timely perform work, properly pay its own subcontractors or suppliers, or promptly correct rejected, defective, or nonconforming work.
3. **Changes in Order/Cancellation.** Purchaser shall have the right by written order to make changes from time to time in the materials or services to be furnished by Supplier under this Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for, Supplier's performance under this Purchase Order, an equitable adjustment shall be made in the price and/or delivery schedule, provided that such adjustment shall be set forth in a written modification to the Purchase Order signed by Purchaser and Supplier. Purchaser shall have the right, upon written notice to Supplier, to cancel this Purchase Order (or any unfilled portion thereof) without any liability other than to make payment for materials or services which have been provided.
4. **Delivery of Materials.** All materials shall be delivered and services performed as specified by Purchaser. Freight charges, if any, shall be paid by Supplier unless this Purchase Order specifies otherwise. Risk of loss shall pass from Supplier to Purchaser upon Purchaser's receipt and acceptance of materials. All materials and services shall be subject to inspection by Purchaser or its representatives. Purchaser may, at any time, (a) return to Supplier at Supplier's expense, or (b) hold at Supplier's risk and expense, any materials that are (i) non-conforming, (ii) shipped contrary to Purchaser's instruction, (iii) delivered at a time other than as specified for delivery in this Purchase Order or if no date is specified, after passage of a reasonable time, (iv) in excess of the quantities covered by this Purchase Order, or (v) violative of any law, regulation, or other applicable government order. Purchaser's return of materials as provided in the preceding sentence shall not be deemed a waiver of any other right or remedy which Purchaser may have as a result of, or in connection with, any breach of warranty or other failed performance under this Purchase Order. Purchaser may reject or revoke acceptance of any materials returned by Purchaser's customers for any commercially acceptable reason. Acceptance by Purchaser of any portion of materials delivered under this Purchase Order shall not bind Purchaser to accept future non-conforming shipments, nor shall Purchaser be deprived of its rights to reject goods already accepted which are later discovered to be nonconforming. Acceptance of any portion of materials delivered or services provided under this Purchase Order shall not be deemed a waiver of Purchaser's right to make a claim for damages, including, without limitation, manufacturing costs, loss of profits, or other damages suffered by Purchaser by reason of such nonconformance, defects, breach of Supplier's warranty, breach of Supplier's performance or defective workmanship.
5. **Time is of the Essence.** Time is and shall remain of the essence in this Purchase Order. No acts of Purchaser, including acceptance of late provision of materials or services hereunder, shall constitute waiver of this provision. If Purchaser determines in good faith that any threatened delay of the timely performance under this Purchase Order may jeopardize Purchaser's business operations, Purchaser may terminate this Purchase Order, in which case Purchaser shall have no continuing obligation or liability to Supplier with respect to this Purchase Order.
6. **Warranty.** Supplier warrants that the materials ordered and services to be performed, if any, will be free from defects in materials, workmanship, and fabrication, performed in a good workmanlike manner, and that all materials delivered shall be of quality, quantity, size, and description specified and strictly in accordance with the Purchaser's specifications, as set forth in this Purchase Order. Supplier warrants that such materials or services shall be fit for the purpose for which they are ordered. These warranties shall survive acceptance and payment and shall run to Purchaser and its successors, customers, and end users of the materials and services.
7. **Indemnification.** Supplier shall defend, hold harmless, and indemnify Purchaser and its respective officers, directors, employees, agents, and representatives from and against all damages, claims, or liabilities and expenses (including attorneys' fees) (a) arising out of or resulting in any way from any defects, including defective workmanship, in the materials or services sold to or supplied to Purchaser by Supplier under this Purchase Order, and (b) arising out of or resulting in any way from any act or omission of Supplier, its agents, employees or subcontractors related to this Purchase Order.
8. **Damages.** Purchaser's liability for breach of this Purchase Order shall not exceed the difference between the resale price of any materials or works in process, sold in good faith and in a commercially reasonable manner and the contract price for such materials or works in process, less expenses and costs saved in consequence of Purchaser's breach. Purchaser shall not be liable for any indirect, incidental, special, or consequential damages. Remedies contained herein are not optional and shall be Supplier's exclusive remedies. Upon request of Purchaser, Supplier shall provide evidence of insurance with coverages and limits acceptable to Purchaser, including workers compensation insurance and comprehensive general liability insurance.
9. **Miscellaneous.** The contract resulting from the acceptance of this Purchase Order shall be interpreted in accordance with the laws of the State of Wisconsin. Both parties irrevocably submit to the jurisdiction of the Circuit Court of Outagamie County, Wisconsin, for any action or proceeding relating to this Purchase Order. No waiver of any of the provisions contained in this Purchase Order shall be valid unless made in writing and executed by Purchaser. No charges beyond the contract price set forth in this Purchase Order will be allowed except with Purchaser's prior written consent. Failure of Purchaser to insist upon strict performance of the terms of this Purchase Order shall not constitute a waiver of any of the provisions of this Purchase Order or waiver of any other default. This Purchase Order contains the entire understanding between the parties related to the transactions contemplated herein and supersedes all prior or contemporaneous agreements or understandings. No modification, waiver, amendment, discharge, or change of this Purchase Order shall be valid unless set forth in writing and signed by both parties. This Purchase Order shall not be construed against one party in favor of the other by reason of draftsmanship. This Purchase Order is not assignable by Supplier.