

### References

A minimum of two open active trade accounts and one bank reference are required for all credit applications. A fax number or e-mail address is also required for each reference.

#### Trade References

Name : \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Account number: \_\_\_\_\_

Telephone \_\_\_\_\_ Fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Name : \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Account number: \_\_\_\_\_

Telephone \_\_\_\_\_ Fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Name : \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Account Type: \_\_\_\_\_ Account number: \_\_\_\_\_

Telephone \_\_\_\_\_ Fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

Joseph Wick Nurseries LTD  
Credit Department  
5151 Forrest Ave Dover DE 19904  
PO Box 617 Dover DE 19903  
302-730-9070  
302-730-9076 Fax

Credit Agreement

**BUYER UNDERSTANDS AND AGREES THAT THESE TERMS SHALL SUPERCEDE ANY TERMS CONTAINED ON BUYERS PURCHASE ORDER OR INSTRUMENT SUBSTITUTED BY BUYER.**

**Quotations:** Quotations are a proposal to furnish the materials listed therein. It is not intended as a lump-sum quotation, but it is a proposal to sell our products at the unit price as shown. Prices are good for thirty (30) days from date of quotation unless otherwise specifically noted.

**Prices, Payment and Late charges:** Prices are F.O.B. point of shipment, all freight charges are subject to payment by buyer. If Seller prepays such costs, Buyer shall reimburse Seller for such costs. In addition, Buyer shall pay all costs and expenses incurred in connection with excess packaging. Prices are subject to change without notice. Full payment of purchase price and other charges is due within thirty (30) days after invoice date. If full payment is not received by the applicable due date, Buyer agrees to pay Seller attorney's fees and other costs of collection incurred by Seller, and a monthly late charge equal to one and one-half percent (1.5%) of all outstanding amounts. Buyer understands that Seller may refuse to sell any goods to Buyer, until overdue accounts are paid in full. Buyer shall be responsible for the payment of all taxes, duties, customs and other fees of any nature imposed relating to this transaction. In the event Seller is required to prepay any such amount, Buyer will reimburse Seller immediately.

**Credit Approval:** All orders are subject to approval of Buyer's credit. If Buyer's credit is not approved by Seller prior to shipment of the goods, Seller may require, in its sole discretion, different terms of payment from those specified in this document, including, without limitation, requiring Buyer to pay Seller cash upon delivery, or to return the Goods to Seller at Buyer's expense. If within the period stated, in such demand Buyer fails or refuses to agree to such different terms of payment or refuses to give adequate assurance of due performance, Seller may, at its option, treat such failure or refusal as a repudiation of the portions of this agreement which has not been fully performed.

**Delivery:** Seller shall ship the goods to the location designated by Buyer via commercial carrier or private delivery at the earliest available shipment date. Shipping dates are estimates only. Changes in the shipping schedule by Buyer may at Sellers' discretion result in an increase in the Shipping charges and or purchase price of the Goods.

**Irrevocability:** Buyer acknowledges that Seller may not have on hand in Seller's open stock all of the items purchased by Buyer, and that Seller will be relying on Buyer's agreement to purchase such items as a basis for Seller to enter into binding agreement with others for the delivery of such items. Because of Seller's reliance, Buyer agrees that Buyer's obligation to purchase the Goods shall be unconditional and irrevocable; Buyers' cancellation or refusal to accept the Goods shall be subject to such cancellation charges as Seller shall determine is appropriate, together with such other remedies as may be provided herein and under applicable law. Seller will determine acceptability of Returned Goods. Credit will be issued on Resalable Goods only. All returns are subject to Restocking and Handling charges.

**Non-Conforming Goods:** Buyer shall notify Seller in writing within three (3) days after delivery of any non-conforming Goods or any deficiencies or shortages; otherwise all such claims shall be deemed waived by Buyer. The use or resale by Buyer of any goods claimed to be non-conforming or deficient shall constitute acceptance of such items by Buyer. Buyer shall have no right to withhold payment of the purchase price or to adjust the amount of the purchase price because of any such claim. The sole remedy of the Buyer shall be the replacement or repair by Seller, at Sellers' option, of non-conforming or deficient items.

**Disclaimer and Limited Warranty:** All Goods sold by Seller are warranted to be free from defects in material and workmanship, to the extent, in the manner and during the period provided in the applicable express Warranty extended to Seller by the Manufacturer of such Goods, and to the extent Seller is able to enforce such Manufacturer's Warranty. Seller shall provide to buyer a copy of the applicable Express Warranty extended by the Manufacturer of any items purchased hereunder upon written request. The foregoing Warranty is in lieu of and excludes all other Warranties not expressly set forth herein, whether express or implied by operation of Law or otherwise, including but not limited to any implied warranties or merchantability or fitness for a particular purpose. Seller must not be liable for incidental or consequential losses, damages or expenses directly or indirectly arising from the sale, handling or use of the goods, or from any other cause relating thereto. Seller's liability hereunder in any case is expressly limited to the repayment of, or crediting Buyer with, and amount equal to the purchase price of such Goods, whether such claims are for breach of Warranty or negligence. Any claim by Buyer with reference to the Goods sold hereunder for any cause shall be deemed waived by the Buyer unless submitted to Seller in writing within three (3) days from the date Buyer discovered, or should have discovered, any claimed breach.

**Subsidiary and Affiliates:** This order may be performed and all rights hereunder against Buyer may be enforced, in whole or in part, by Seller or by its parent corporation or any one or more subsidiary or affiliate of Seller.

**Force Majeure:** Seller shall not be liable to Buyer for any breach hereunder, including for failure to deliver or delays in delivery, construction, erection, or start-up, occasioned by causes beyond the control of Seller or Seller's suppliers or subcontractors, including but not limited to, unavailability or excessive cost of material, strikes, labor slowdowns and stoppages, labor shortages, lockouts, fires, floods, earthquakes, storms, drought, adverse weather, riots, thefts, accidents, embargoes, war (whether or not declared) or other outbreak of hostilities, civil strife, acts of governments, acts of God, acts of the public enemy, unusually severe weather, machinery breakdowns, delay or unavailability of carriers or suppliers, shortages of labor, government acts or regulations, orders or injunctions, or other reasons, whether similar or dissimilar to the foregoing (together a 'Force Majeure Event'). In addition, in the event of a Force Majeure Event, (i) the time for Sellers performance shall be reasonably extended. (ii) Seller and Buyer shall take reasonable steps to adjust all affected dates in the agreement and (iii) an adjustment in the purchase price shall be made for the resulting additional costs to Seller.

**General Provisions:** Buyer shall not have the right to assign this agreement without the written consent of Seller, which Seller may withhold in its sole and absolute discretion. This agreement shall be governed by and construed in accordance with the applicable laws of the state of Delaware. Nothing contained herein shall be construed so as to require the commission of any acts contrary to law. Seller is an equal employment opportunity employer. This Agreement represents the entire Agreement between the parties with respect to the subject matter set forth above.

Corporation Name: \_\_\_\_\_

Trade Name (if applicable): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_  
(per Corporate Resolution)

Print Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **CREDIT TERMS AND CONDITIONS**

Upon approval of this agreement by Joseph Wick Nurseries, LTD, any credit granted to the aforesaid named shall be under the following terms and conditions:

- 1) I (We) understand the purpose of the information supplied to you in this application is for the purpose of obtaining credit information. I (We) further understand and agree to authorize the release of credit information to Joseph Wick Nurseries, LTD or any credit investigative agency assigned by the same at any time during the term of the agreement.
- 2) Applicant agrees to pay all purchases as billed on or before 30 days from the invoice date. Payment is credited as of the date payment is received in the offices of Joseph Wick Nurseries, LTD at 5151 Forrest Avenue, Dover, Delaware 19904.
- 3) All invoices are due in full on receipt. Balances not paid within 30 days of the date of invoice shall accrue interest at the rate of one and a half (1 1/2%) percent per month or any part thereof on the unpaid balance.
- 4) In the event applicant fails to pay the balance due within 30 days of the date of invoice applicant agrees to pay Collection Agency fees or Attorney fees and payable hereunder in the event Customers account is placed for collection or placed with an Attorney in addition to Court fees and Filing fees.
- 5) Applicant hereby irrevocably appoints the Secretary of State in and for the State of Delaware as applicant's agent for service of process in any litigation arising out of the terms of this agreement, provided that Joseph Wick Nurseries, LTD follows the procedure set forth for long arm service pursuant to 10 Del. C. 3104. Applicant hereby consents and agrees that disputes arising out of the relationship between applicant and Joseph Wick Nurseries, LTD shall be subject to the exclusive jurisdiction of the appropriate courts in Kent County, State of Delaware.
- 6) I (We) hereby authorize any law enforcement agency, court, property owner, general contractor, Bonding company and entities not listed herein to enforce this provision without legal or judicial intervention and Hold Harmless all of the aforementioned for the same. Any and all costs associated with repossession, recovery, dismantling, and collection fees or legal fee will be the responsibility of the applicant.

To Whom It May Concern

I (We) authorize any person, trade reference or financial institution having information as to the above named Firm or individual to release financial information and credit reports to Joseph Wick Nurseries, LTD or its assigned credit agency or agent.

Corporation Name: \_\_\_\_\_

Trade Name (if applicable): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_  
(per Corporate Resolution)

Print Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CERTIFICATE OF CORPORATE RESOLUTION  
AUTHORIZING ESTABLISHMENT OF A CREDIT ACCOUNT**

I, \_\_\_\_\_, President  
(Print Name)

Of \_\_\_\_\_  
(Name of Corporation)

Organized and existing under the laws of the State of \_\_\_\_\_  
\_\_\_\_\_

And having its principal place of business at:

\_\_\_\_\_  
**(Full street address, no PO boxes)**

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Hereby certify that the following is a true copy of a resolution adopted by the Board of Directors of the Corporation at a meeting convened and held on

\_\_\_\_\_ at which a quorum was present and voting throughout and that such resolution is now in full force and effect and is in accordance with the provisions of the charter and by-laws of the Corporation.

RESOLVED: That the corporation approves the establishment of a credit account with Joseph Wick Nurseries, LTD and agrees to the terms and conditions of said credit account as outlined in the "Credit Agreement" the "Credit Terms and Conditions" documents of Joseph Wick Nurseries, LTD.

RESOLVED: That the \_\_\_\_\_ of the Corporation  
(Title of authorized Officer)

Is hereby authorized to sign on behalf of the corporation any contracts or forms.

RESOLVED FURTHER: That the Board of Directors and Officers of the Corporation are hereby authorized and directed to certify to any interested party that this resolution has been duly adopted, is in full force and effect, and is in accordance with the provisions of the charter and by-laws of the Corporation.

I further certify that this corporation is duly organized and existing, and has the power to take the action called for by the foregoing resolution

\_\_\_\_\_  
Authorized signature and Title

Witness my hand seal of this corporation on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Secretary of the Corporation)