



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

PLEASE READ THIS FLOWERING ONLY LICENSE AGREEMENT BEFORE ACCEPTING THIS ORDER AND USING THE ENCLOSED CUTTINGS OF Ball FloraPlant PLANT MATERIAL. By accepting this order and/or opening the box(es) of Ball FloraPlants plants, you, the customer receiving this order as shown on the shipping documents (hereinafter "Licensee"), accept the terms of this FLOWERING ONLY LICENSE AGREEMENT (hereinafter Agreement). If you do not wish to agree to the terms 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 "Licensor") and Licensee.

Whereas, Licensor 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 of this Agreement (hereinafter "Licensed Products") and to enter into agreements concerning these Licensed Products. Whereas, Licensee wishes to obtain for itself a license to grow and sell "Finished Plants" of the Licensed Products listed on Exhibit A of this Agreement. As used herein, **the term "Finished Plants" means plants of the Licensed Product grown in a 3-inch size container or larger for at least 4 weeks from planting of a rooted cutting and 7 weeks from planting of an unrooted cutting.** 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 license agreement, written or oral, between Licensor and Licensee relating in any way to the Licensed Products and the Finished Plants.
2. Licensor hereby grants to Licensee a non-exclusive license to grow and sell the Finished Plants of the Licensed Products that are delivered by Licensor to Licensee, with no rights to grant sublicenses. Any and all growing to be performed by Licensee under this Agreement must be for the purpose of producing and selling Finished Plants only within the **United States and Canada** (hereinafter "Licensed Territory"). The sale of unrooted or rooted cuttings of the Licensed Products to any other company or individual is strictly prohibited as is the export of the Licensed Products outside the Licensed Territory.

ALL FORMS OF PROPAGATION OF THE LICENSED PRODUCT & FINISHED PLANTS ARE STRICTLY PROHIBITED

3. Licensee is required to include Licensor supplied/approved labels/tags with all Finished Plants sold by Licensee under this Agreement. Licensor approved tag suppliers are: Multi Packaging Solutions (fmr. JH Co.) ph (866) 448-8300, fax (800) 968-2598; Master Tag ph - (800) 253-0439, fax (800) 828-0003. Licensee is strictly prohibited from using Ball FloraPlant or Simply Beautiful® label/tags and trademarks for any other purpose. Licensee must contact Ball Horticultural Company at LSaracino@ballhort.com if considering creating, printing, producing, or making plant tags, containers, or pots displaying Ball FloraPlant product names and trademarks (as noted on Exhibit A), images, or cultural information. If Licensee is participating in the Simply Beautiful Branding Program, please contact your Ball Sales Representative at 1 (800) 879-BALL(2255).
4. Mutations:
 - a) If Licensee finds, induces, observes, or discovers an Essentially Derived Variety (hereinafter "E.D.V.") such as any mutation or sport in any Licensed Product or Finished Plant, then Licensee shall report the E.D.V. immediately to the Licensor/Agent by registered letter. The letter shall include, at a minimum, the name for the Licensed Product 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 Licensor/Agent the Licensee shall immediately provide the Licensor/Agent with sufficient material of the E.D.V.
 - c) Licensor or the third party owner of the Licensed Product (hereinafter "Third Party") if the Licensed Product is the subject of a third party license agreement, shall own all right, title and interest in the E.D.V. Licensee hereby assigns all right, title, and interest in the E.D.V. to Licensor or Third Party, if applicable. Licensee agrees to cooperate with Licensor or Third Party by executing any documents Licensor 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. Licensee agrees that the Finished Plants produced by Licensee under this Agreement will be marketed, sold, and/or transferred only under the product names, and trademarks where applicable, listed on Exhibit A.
6. Licensee agrees not to sell, loan, give, or otherwise make available to others the Licensed Products, cuttings of the Licensed Products, Finished Plants or cuttings of Finished Plants for purposes of reproduction by any manner, means, or method whatsoever.
7. **Licensee agrees to allow Licensor or their representatives, including but not limited to RAI, to inspect and inventory, at any reasonable time, the Licensee's premises and plantings to ensure compliance with this Agreement.**
8. Upon breach by the Licensee of any terms of this Agreement, the grant of the license and other rights to Licensee under this Agreement shall be immediately terminated. In the event of such a termination of this Agreement, Licensee, agrees to destroy all plants, cuttings, buds, and other matter capable of reproduction of the Licensed Products and Finished Plants (hereinafter "Existing Plant Matter"), and all plants, cuttings, buds, and other matter capable of reproduction originating from the Existing Plant Matter. Licensor 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 Licensor's rights, Licensor is entitled to reasonable attorney fees and costs.
10. Licensee 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 4 c, 6 and 8-11 shall survive the termination or expiration of this Agreement.