



**BANK REFERENCES:**

Name \_\_\_\_\_ Address \_\_\_\_\_ Branch \_\_\_\_\_  
Contact Name \_\_\_\_\_ Account Type \_\_\_\_\_ Account # \_\_\_\_\_  
Branch Phone \_\_\_\_\_ Branch Fax \_\_\_\_\_  
Estimated Annual Purchases from Dean's Evergreens, Inc. \$ \_\_\_\_\_  
Your Total Annual Sales \$ \_\_\_\_\_ Amount of Credit Desired \_\_\_\_\_

**THIS CREDIT APPLICATION WILL NOT BE CONSIDERED UNLESS ALL INFORMATION IS PROVIDED AND THE ACCOMPANYING CREDIT SALES AGREEMENT IS PROPERLY SIGNED BY AN AUTHORIZED INDIVIDUAL.**

**CREDIT SALES AGREEMENT**

**GENERAL CONDITIONS:**

This agreement sets forth the terms, conditions, obligations, guarantees, and warranties between the customer named on the attached credit application hereafter referred to as (buyer), and Dean's Evergreens Inc., hereafter referred to as (seller). The term of this agreement shall commence with the seller's approval of the customer's credit application and shall terminate upon either party providing written notice of termination. Buyer hereby authorizes seller to investigate buyer's credit record and to report buyer's performance under this agreement or any other agreement to other vendors, and/or credit reporting agencies. Fulfillment of orders is subject to cancellation or delay caused by governmental regulations, laws, orders, droughts, inclement weather, labor shortages and disputes, floods, fire, frost, war, embargo, or other causes beyond the control of the seller. All orders are accepted subject to the availability of stock on hand at the time of delivery the seller reserves the right to limit the amount of credit granted to the buyer and to adjust that limit, up or down, at their sole and exclusive option.

**PAYMENT TERMS AND FINANCE CHARGES:**

Payment shall be due within 30 days after shipping date. In the event an invoice is not paid in full within 30 days from the shipping date, a FINANCE CHARGE EQUAL TO 1 1/2 % PER MONTH, (AN ANNUAL RATE OF 18 %), will be assessed and due on the unpaid balance. The annual rate may be adjusted on future invoices with notification on the invoice. The FINANCE CHARGE will appear on the first monthly statement after the due date and a subsequent FINANCE CHARGE OF 1 1/2 % will be added each month, until payment in full is received. Each monthly statement sent to the buyer shall be deemed correct unless buyer notifies seller, in writing, of any current errors therein, within 10 business days from buyer's receipt thereof.

**PRICES:**

All prices shall be those printed in our current catalog. We reserve the right to change said prices at any time without notice, including the option to quote said prices higher or lower than those published in our current catalog at our sole and exclusive option. BUYER SHALL WAVE THE RIGHT TO ANY SAID DISCOUNT OFFERED IF PAYMENT IS NOT MADE WITHIN SAID TERMS. PRICES SHALL REVERT TO OUR CURRENT CATALOG LIST PRICE (EVEN IF INVOICE REFLECTS THE LOWER DISCOUNTED PRICE), IF PAYMENT IS NOT RECEIVED WITHIN TERMS. All prices are F.O.B. Monroeville, NJ or point of origin if other than Monroeville, NJ and freight charges are extra.

**DELIVERY, INSPECTION AND CLAIMS:**

On all shipments or pickups, buyer must check the condition and count of the nursery stock at the time of delivery. No claims for shortages, damaged stock, grading errors or other evident problems, or errors in filing an order will be honored unless it is made in writing on the bill of loading or invoice upon receipt of shipment and co-signed by the truck driver. Failure to make a claim on the bill of lading or invoice shall constitute a waiver of your right to a refund. Failure of buyer to have available at the time of delivery an individual authorized to inspect the products being delivered shall not relieve buyer of any obligations noted here.

Any claims for defects or problems which were not evident at the time of delivery (expressly excluding, but not limited to, claims for shortages, damage, or grading errors) must be made in writing to us within 5 business days (postmarked or faxed) of the receipt of the products.

The only exception to the above is any claim for dormant plant material that fails to "leaf out" must be made in writing by May 30<sup>th</sup>. No claim will be considered after May 30<sup>th</sup> on plants that were shipped dormant.

Any product at which a claim is filed at all times and under all circumstances must be held for inspection by a representative of the seller. Disposal of any product within 30 days of filing a claim shall constitute a waiver of said claim.

The seller's responsibilities for the product ceases upon delivery of the stock in good condition to any transportation company. If any damage or errors occur due to shipping, buyer should immediately file a claim with transportation company. Buyer expressly agrees to pay all invoices when due, even if all or a portion of said invoice is subject is subject of a claim of any kind.

**NEW JERSEY SALES TAX:**

Under the New Jersey Sales and Use Tax Act, we are required to collect a 7 % tax on all nursery stock, unless we have proper documentation that the sale is exempt. The following sales are exempt:

Customers Located in New Jersey -

1. Stock is exempt which will be resold with appropriate NJ Sales Tax collected and we have been provided with a properly executed Resale Exempt Certificate (Form ST-3) prior to stock being delivered.
2. Stock purchased from us and used for Federal, State of New Jersey, or New Jersey Municipal projects is non-taxable, provided we have received prior to sale, a Contractor's Exempt Purchase Certificate (ST-13) for each order.
3. Stock which will be planted in our buyer's nursery for growing on to a larger size is exempt if we have a properly executed Farmer's Exemption Certificate (Form ST-7).

Please Note: Sales to landscape contractors are not tax exempt and the 7 % New Jersey Sales Tax must be added by us onto the invoice, unless they qualify under # 2 shown above.

**Owner's Signature:** \_\_\_\_\_  
**Print** \_\_\_\_\_

**Out-of-state Customers:**

Sales to out of state buyers which are delivered by us or a carrier hired by us are exempt by New Jersey Sales Tax if delivered to the out-of-state location. Sales made by us to an out of state buyer in which the buyer picks up the stock in New Jersey are taxable and subject to the New Jersey 7 % Sales Tax unless the goods are intended to be resold and the out-of-state buyer has properly registered with the New Jersey Division of Taxation and has issued to us a properly executed Resale Exemption Certificate (Form ST-3) or completes ST3-NR for each purchase.

Please Note: That Form ST-3 is valid only when completed by a customer registered with the New Jersey Division of Taxation. The New Jersey Sales Tax Bureau will supply New Jersey exempt certificate application forms and instructions for out-of-state customers upon request.

**SECURITY INTEREST:**

The seller is granted and claims a security interest by virtue of this credit agreement in all merchandise purchased by means of the credit so extended until the entire balance including any finance charges and fees are paid in full. The security interest retained is a purchase money security interest in all merchandise purchased, the description of which is shown by the original indicia of the transaction.

**DEFAULT:**

Should either the buyer or seller initiate legal proceedings arising out of the sale or delivery of products it is expressly agreed between the parties that reasonable court costs and attorney's fees shall be awarded to the prevailing party in those proceedings. Without limiting the generality of the foregoing, should the seller incur costs or attorney's fees in attempting to collect a delinquent account, buyer expressly agrees to reimburse such costs and fees to the seller. The seller may at its option find the buyer in default any time after a particular invoice is over 30 days old and may then place buyer's account for collection, automatically triggering buyer's liability for costs and attorney fees associated with said collection, should the seller prevail.

**LIMITATION OF WARRANTY, LIABILITY AND REMEDIES:**

The seller warrants that all plants sold are true to name and within recognized tolerances as to grading, size, and quality. There are no other warranties that extend the face hereof, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. The seller, its officers, agents, or employees cannot be deemed to have expanded the scope or detail, or to otherwise amend this limitation or warranty unless same is reduced to writing and is signed by seller's president or vice-president. Buyer relies at his own risk upon any opinion or advice requested of or given by any officer, employee or agent of the seller unless given in writing and signed by the president or vice president of Dean's Evergreens, Inc. The exclusive remedy, buyer has against the seller for any cause of action relating to products purchased is a claim for damages and in no event shall damages or recovery exceed the purchase price of the specific products which resulted in the alleged loss, damage injury or other claim. The buyer hereby expressly waives any and all claims against the seller for special indirect, incidental, or consequential damages or expenses, of personal injury or business or personal reputation whether or not based on the seller alleged negligence, breach of warranty, strict liability in tort or any other cause of action, buyer acknowledges that buyer's acceptance of the above section is an express condition of seller's agreement to conduct business with buyer.

**INDEMNIFICATION:**

The buyer indemnifies and holds harmless the seller, its officers, agents, and employees from and against any and all liabilities, costs, damages, losses, and expenses for injury to persons or damages to property arising in any manner out of products or services to be provided by the seller.

**RETURNED CHECKS:**

Buyer personally guarantees all checks to be good and fully funded. In the event the a check is returned to us unpaid for any reason (including stopped payment), the buyer will be notified and given 10 business days to remit full payment including a \$35 handling fee. Said payment should be in the form of cash, certified or cashier's check. Failure to pay off a returned check may subject the buyer to both criminal and civil actions to the fullest extent the law permits. Buyer agrees to pay all costs associated with collection of said check.

**AMENDMENT:**

The seller reserves the right to at any time amend the provisions of this credit sale agreement upon notice mailed to the buyer(s) at his last known address. The purchase of products subsequent to the effective notice to buyer of such amendment shall constitute an acknowledgement and acceptance of the amendment by the undersigned. The seller may at any time, with or without cause, and with or without prior notice, revoke the privilege of extending credit to the undersigned for future purchase of products(See "Limitation of Warranty, Liability, and Remedies" for provisions covering amendments to same.)

**NOTICES:**

Buyer(s) will immediately deliver written notice via certified mail of any adverse change in his financial condition, death or disability of owners/managers, any change of residence or business address, and intention to sell or transfer his business or business-related assets in part or in full.

**APPLICABLE LAW:**

This agreement becomes valid and binding between the parties upon the sellers approval of the buyer's credit. All sales are due and payable in the Township of Elk, Gloucester County, New Jersey.

Any action arising out of the sale or delivery of products under this agreement shall be interrupted according to the laws of the State of New Jersey and shall be brought in the courts located in the County of Gloucester.

In any clause or provision of this credit sale agreement is found to be invalid or is incapable of being enforced by rule of law or public policy, all other clauses and provisions shall, nevertheless, remain in full force and effect. Failure by the seller to fully or consistently enforce any clause or provision or part thereof of this agreement shall not constitute a waiver by the seller of any rights past, present, or future to enforce their rights under this agreement.

Owner's Signature: \_\_\_\_\_

Print: \_\_\_\_\_

