

# TERMS AND CONDITIONS

## DEAN INNOVATIONS INC.

"You" and "your" refer to the undersigned buyer, its agents and assigns. "Dean Innovations" refers to Dean Innovations, Inc., an Oregon corporation, and its affiliates, successors and assigns. "Product" refers to planting mixes, mulch, soil, compost, gravel, firewood, and other goods manufactured and/or sold by Dean Innovations. "Dean Innovations' Website" refers collectively to www.fineroutdoorliving.com and www.firewoodportland.com.

All sales made by Dean Innovations are expressly conditioned on your acceptance of these Terms and Conditions. If there is any inconsistency between these Terms and Conditions and those contained in any purchase order or other document submitted by you or on your behalf, these Terms and Conditions shall control even if your documents expressly limit acceptance to use of your Terms and Conditions. Dean Innovations shall be bound only by such additional terms and conditions that Dean Innovations specifically accepts in writing.

### PAYMENT TERMS; CANCELLATION

All orders are final unless canceled or modified at least 48 hours in advance of scheduled delivery. Orders cancelled or modified with less than 48 hours' notice are subject to a late cancellation fee. No order is final until accepted by Dean Innovations. Payment is due at the time of delivery. Payment can be made only by cash, money order, or credit card. Hourly charges for Product delivery are subject to a minimum of four (4) hours. Late payments accrue interest at 12% or the maximum legal rate, if lower.

### DELIVERY AND INSPECTION

You must provide a first and second choice for delivery location. If Dean Innovations' driver cannot access either site, the driver is hereby authorized to make a curb-side drop. Dean Innovations reserves the right to cancel delivery if, in the determination of the driver, delivery cannot be completed in a safe manner.

You are solely responsible for determining the amount of Product you require. Any calculations of Product quantity provided by Dean Innovations are for illustrative purposes only. Excess Product may not be returned. Delivered Product quantities are calculated as of the time of delivery by Dean Innovations in its sole discretion. Upon delivery, you agree to immediately inspect the Product and notify Dean Innovations in writing if you are rejecting the Product as substantially non-conforming. Failure to give written notice of rejection that specifies the nature of the non-conformity within (4) days after delivery shall constitute an irrevocable acceptance. If written notice is given, you must keep the Product intact and protected until Dean Innovations has a reasonable opportunity to inspect the Product. If Dean Innovations verifies that the Product is non-conforming, Dean Innovations will ship a replacement Product within a reasonable time at Dean Innovations' expense. Dean Innovations' obligation to accept Product returns and/or to replace defective Products or deliveries is subject to your compliance with and any all conditions set forth on Dean Innovations' website, including, without limitation, those set forth in the section labeled "FULL CORD ON DELIVERY GUARANTEE."

### DISCLAIMER AND LIMITED WARRANTY:

Dean Innovations expressly warrants that the composition of its product conforms to the description on the Product label and/or Dean Innovations' website. Notwithstanding anything else on these Terms and Conditions, any Product label, and/or Dean Innovations' website, Deal Innovations sells the Product AS IS and makes no other warranties, whether written or oral, or implied, including any warranty of Performance, Quality, Merchantability, or Fitness for a Particular Purpose. Because results may vary with different

conditions, soil and plants, Dean Innovations does not warrant any specific outcomes.

YOUR REMEDIES FOR BREACH OF THESE TERMS AND CONDITIONS ARE LIMITED EXCLUSIVELY TO PRODUCT REPLACEMENT AT DEAN INNOVATIONS' SOLE OPTION. DEAN INNOVATIONS WILL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM THE USE OR PURCHASE OF ANY PRODUCT, INCLUDING DAMAGES FOR LOST PROFITS AND LOSS OF USE.

### LIABILITY WAIVER

In consideration for the Product purchased or to be delivered hereunder, you hereby covenant NOT TO SUE and further hold harmless Dean Innovations, its officers, employees and agents from and against any and all claims, demands, and causes of action relating to property damage, bodily injury, emotional distress, or any other type of damage or loss whatsoever arising directly or indirectly out of the delivery, use, or provision of Products. By signing below, you acknowledge that you are aware that damages to property and/or bodily injury may result from the weight of the truck used for delivery of the Product, or the act of dumping, including the rolling and/or bouncing of individual pieces which may strike nearby objects or persons.

### FORCE MAJEURE

In no event shall Dean Innovations be liable for non-performance or delay in performance arising directly or indirectly from acts of God, inclement weather, unforeseeable circumstances, acts or failures to act by any governmental authority, declared or undeclared war, riot, labor disputes, revolution or causes of any other kind beyond Dean Innovations' reasonable control.

### ATTORNEY'S FEES

In the event of a dispute relating to these Terms and Conditions or any Product, the prevailing party shall be entitled to recover its attorney's fees and costs from the non-prevailing party, including fees and costs incurred at trial and on appeal or discretionary review.

### CHOICE OF LAW; JURISDICTION

These Terms and Conditions shall be governed and construed in accordance with the laws of the State of Oregon without regard to choice of law rules. In the event of any dispute between you and Dean Innovations, the parties irrevocably submit to the exclusive jurisdiction of the Multnomah County Circuit Court in Portland, Oregon or the United States District Court in Portland, Oregon.

### ENTIRE AGREEMENT; SEVERABILITY

These Terms and Conditions and the purchase order to which they are attached constitute the complete and exclusive agreement between you and Dean Innovations superseding all contemporaneous or prior agreements and other communications, written or oral, relating to your order. The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the remainder of this agreement, which shall continue in full force and effect.

### AMENDMENTS

These Terms and Conditions may be amended by written agreement of the parties hereto. Notwithstanding the foregoing, in the event of a conflict between these Terms and Conditions and any similar term or condition set forth on Dean Innovations' website, those set forth on Dean Innovations' website shall control.

By signing this document, you acknowledge and agree to the liability waiver and other terms and conditions set forth above.

Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

CANCELLATIONS REQUIRE 48 HOURS NOTICE • DELIVERY CAN ONLY BE MADE TO SAFE LOCATION • PRODUCT MUST BE INSPECTED IMMEDIATELY UPON DELIVERY • PRODUCT QUANTITIES DETERMINED BY DEAN INNOVATIONS AT TIME OF DELIVERY • PAYMENT DUE AT TIME OF DELIVERY • PRODUCT SOLD "AS-IS" WITHOUT WARRANTIES EXCEPT AS STATED ABOVE • A LIEN MAY BE CLAIMED FOR LABOR, MATERIALS, RENTALS AND REASONABLE PROFIT UNDER ORS CH. 87.