

# TERMS AND CONDITIONS

## DEAN INNOVATIONS INC.

"You" and "your" refer to the undersigned buyer, its agents and assigns. "Deans" refers to Dean Innovations, Inc., an Oregon corporation, and its affiliates, successors and assigns. "Product" refers to fill dirt, planting mixes, mulch, soil, compost, gravel, firewood, and other goods transported, manufactured and/or sold by Deans. "Deans' Website" refers collectively to [www.fineroutdoorliving.com](http://www.fineroutdoorliving.com) and [www.firewoodportland.com](http://www.firewoodportland.com). "Service" means delivery and/or removal of Product to or from the project site. All Product designated for removal must be contaminant-free.

All Services performed by Deans are 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.

### 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 Deans. 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. Customer shall pay a \$25 fee for all bounced checks.

### DELIVERY AND INSPECTION

For Product delivery, you must provide a first and second choice for delivery location. If both sites are inaccessible, the driver may make a curb-side drop. Deans may cancel delivery if the driver determines that delivery cannot be made in a safe manner.

You are solely responsible for determining the amount of Product you require. Any calculations of Product quantity provided by Deans are for illustrative purposes only. Excess Product may not be returned. Delivered Product quantities are calculated as of the time of delivery by Deans in its sole discretion. Upon delivery, you agree to immediately inspect the Product and notify Deans 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 Deans has a reasonable opportunity to inspect the Product. If Deans verifies that the Product is non-conforming, Deans will ship a replacement Product within a reasonable time at Deans' expense. Deans' 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 Deans' Website, including, without limitation, those set forth in the section labeled "FULL CORD ON DELIVERY GUARANTEE."

### DISCLAIMER AND LIMITED WARRANTY:

Deans warrants that Product composition conforms to the applicable description on the Product label and/or Deans' Website (if any). Subject to the foregoing, the Service and any Products are provided "as-is", in their present condition and with all defects, and without warranty of any kind, either expressed or implied. Deans makes no warranties that any Product is free of defects or contamination, merchantable, fit for a particular purpose, or

compliant with any legal requirements relating to the presence of hazardous materials or other contaminants. Deans does not warrant that the Product meets the definition of "clean fill" under applicable laws or regulations.

YOUR REMEDIES FOR DEANS' BREACH OF THESE TERMS AND CONDITIONS ARE LIMITED EXCLUSIVELY TO PRODUCT REPLACEMENT AT DEANS' SOLE OPTION. DEANS 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 Deans, its officers, employees and agents harmless 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. The foregoing waiver of claims includes, without limitation, claims relating to actual or alleged contamination of any Products with hazardous substances or other contaminants. Additionally, by purchasing any Products from Deans, 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

Deans shall not be liable for non-performance or delay arising from inclement weather, acts or omissions of any governmental authority, declared or undeclared war, riot, pandemic, labor disputes, or any other causes beyond Deans' reasonable control.

### ATTORNEY'S FEES

In the event of a dispute relating to these Terms and Conditions, the Service or any Product, the prevailing party shall be entitled to recover its attorney's fees and costs from the non-prevailing party, whether incurred at trial, 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 Deans, 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 Deans 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 only by written agreement of the parties hereto.

CANCELLATIONS REQUIRE 48 HOURS NOTICE • DELIVERY CAN ONLY BE MADE TO SAFE LOCATION • PRODUCT MUST BE INSPECTED IMMEDIATELY UPON DELIVERY • PRODUCT QUANTITIES DETERMINED BY DEANS 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.