

## Terms and Conditions

The following Terms and Conditions apply to use of interactive features and functions provided by or through Scotts Miracle-Gro. By using these interactive functions, you acknowledge and agree to be bound by these Terms and Conditions. Scotts Miracle-Gro Company ("Scotts Miracle-Gro") reserves the right to modify these Terms and Conditions at any time and at its sole discretion. In the event of a violation of these terms and conditions, Scotts Miracle-Gro reserves the right to seek all remedies available by law and in equity. In addition, Scotts Miracle-Gro reserves the right to block or deny use of the interactive features and functions to anyone at any time for any reason. Scotts Miracle-Gro may terminate, suspend or discontinue any interactive features and/or functions at any time and without notice or liability.

## Third Party Sites

By accessing third party sites that link to Scotts.com you do so at your own risk and Scotts Miracle-Gro shall not be responsible or liable for the content, advertising, products, or other materials therein. In addition, Scotts Miracle-Gro shall not be responsible for the accuracy or reliability of any information or statements made on third party sites. Scotts Miracle-Gro will have no liability arising out of or related to third party sites or any damages or loss caused or alleged to be caused by or in connection with any purchase, use or reliance on any such content, goods, or services available on or through any such third party sites.

## Content Submission

The interactive features or functions provided by Scotts Miracle-Gro may permit the submission of communications and content (such as photos) by you and other users ("User Content") and the hosting, sharing, displaying, distributing and/or publishing of such User Content. You understand that such User Content may be accessed and viewed by others including the public in general and whether or not such User Content is published, Scotts Miracle-Gro does not guarantee any confidentiality with respect to any User Content. By submitting User Content, you hereby grant Scotts Miracle-Gro, its affiliates, distributors, successors and assigns the right to use, copy, display, perform, distribute, adapt, modify and promote such User Content in any medium.

You shall be solely responsible for your own User Content and the consequences of distributing or publishing them. In connection with User Content, you affirm, represent, and warrant that: (a) you own or have the necessary licenses, rights (including all intellectual property and other proprietary rights embodied by the User Content or represented by the User Content), consents, and permissions to use and authorize Scotts Miracle-Gro to use such User Content in accordance with the license granted to Scotts Miracle-Gro above and as contemplated by the Site and these Terms of Use; and (b) you have the written consent, release and/or permission of each and every identifiable individual person in the User Content to use the name or likeness of each and every such identifiable individual person to enable inclusion and use of the User Content in the manner contemplated by these Terms and Conditions. **For clarity, Scotts Miracle-Gro does not claim ownership of your User Content.**

Scotts Miracle-Gro does not permit copyright infringing activities and infringement of intellectual property rights, and Scotts Miracle-Gro will remove all User Content if properly notified that such User Content infringes on another's intellectual property rights. Scotts Miracle-Gro reserves the right to remove User Content without prior notice. Scotts Miracle-Gro may also terminate a user's access to interactive features or functions provided by Scotts Miracle-Gro if they are determined to be a repeat infringer. A repeat infringer is a user who has been notified of infringing activity more than twice and/or has had a User Content removed from the Site more than twice.

Scotts Miracle-Gro also reserves the right to decide whether a User Content is appropriate and complies with these Terms and Conditions for violations other than copyright infringement and violations of intellectual property law, including, but not limited to, pornography, obscene or defamatory material or

excessive length. Scotts Miracle-Gro may remove such User Content for uploading such material in violation of these Terms and Conditions at any time, without prior notice and at its sole discretion.

## **Trademarks**

All trademarks, trade names, brand names, logos and images, service marks and trade dress displayed in any interactive features or functions provided by Scotts Miracle-Gro (collectively, "Marks") are the property of Scotts Miracle-Gro or other third parties. Scotts Miracle-Gro and its affiliated companies retain all rights regarding their Marks. Nothing contained herein shall be construed as conferring any license to the use of such Marks. You are not permitted to use any Marks included on the Site without the prior written consent of Scotts Miracle-Gro or other third party that own the Marks.

## **Prohibited Uses**

You agree that you will not use the interactive features or functions provided by Scotts Miracle-Gro to upload, submit, post, transmit or otherwise make available User Content:

- that is known by you to be false, inaccurate or misleading;
- that infringes any third party's copyright, patent, trademark, trade secret or other proprietary rights, including without limitation rights of publicity or privacy;
- that violates any law, statute, ordinance or regulation (including, but not limited to, consumer protection, unfair competition, anti-discrimination or false advertising);
- that may be considered defamatory, libel, hateful, to express racial or religious bias or offense, threatening, or harassing to any person or corporation;
- that contains chain letters or pyramid schemes;
- contains any unsolicited advertising, promotional materials, or other forms of solicitation to other users, individuals or entities; or
- that contain software viruses or other harmful computer code or that in any way interfere with or disrupt the interactive feature or function or any servers or networks connected to or used in connection with those features or functions.

## **Copyright Agent**

If you believe any User Content within an interactive features or functions that is posted by or through Scotts Miracle-Gro infringes upon your copyright rights, please forward the following information to the Copyright Agent:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the location where the original or an authorized copy of the copyrighted work exists, for example the URL of the web site where it is posted or the name of the book in which it has been published;
- Identification of the material that is claimed to be infringing and a description of the infringing activity and information reasonably sufficient to permit us to locate the material;
- Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and if available, an email address;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

The Copyright Agent for notice of copyright infringement and mailing address is as follows: Attn: General Counsel, The Scotts Company, 14111 Scottslawn Road, Marysville, Ohio 43041. You acknowledge that if you fail to comply with all the above requirements, your notice may not be valid.

## **Privacy**

Scotts Miracle-Gro's disclosure and use of personal information you provide when using the interactive features or functions provided by Scotts Miracle-Gro are described in our Privacy Policy.

## **Limitation of Liability**

NEITHER SCOTTS MIRACLE-GRO NOR ANY OF ITS SERVICE PROVIDERS SHALL NOT BE LIABLE TO ANY PARTY FOR ANY DAMAGES (WHETHER DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHERWISE) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE ANY INTERACTIVE FEATURE OR FUNCTION OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, OR SERVICES OBTAINED THROUGH OR OTHERWISE IN CONNECTION WITH SUCH INTERACTIVE FEATURES OR FUNCTION, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORIES OF LIABILITY EVEN IF SCOTTS MIRACLE-GRO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In some jurisdiction, limitations of liability are not permitted. Where applicable the foregoing limitation on liability may not apply to you. If these laws apply to you, some or all of the above disclaimers, exclusions or limitations may not apply to you.

## **Disclaimer of Warranty**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SCOTTS MIRACLE-GRO DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUS, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

## **Indemnification**

You agree to indemnify and hold Scotts Miracle-Gro, its officers, directors, employees, shareholders, agents, suppliers and representatives harmless from and against any and all claims, damages, losses, costs, and expenses (including attorneys' fees) that arise directly or indirectly from; (a) your breach of any provision of these Terms and Conditions; (b) a claim arising out of or relating to any materials or content you submit through interactive features or functions provided by Scotts Miracle-Gro; or (c) your use of interactive features or functions provided by Scotts Miracle-Gro.

## **Jurisdiction**

Scotts Miracle-Gro operates from its offices within the State of Ohio. Scotts Miracle-Gro does not imply that the interactive features or functions provided by Scotts Miracle-Gro are legal for use outside the United States. If the interactive features or functions provided by Scotts Miracle-Gro are accessed outside the United States, you hereby acknowledge doing so on your own initiative, and are responsible for compliance with local laws. The Terms and Conditions shall be governed by the laws of the State of Ohio, without giving effect to its conflict of laws provisions. By using the interactive features or functions provided by Scotts Miracle-Gro you agree to submit to the jurisdiction of the State of Ohio and agree that it shall serve as the exclusive venue for any disputes relating to the Site.

## **Consent to Electronic Delivery of Notices**

By agreeing to these Terms and Conditions, you consent to receive all communications, including notices, agreements, legally-required disclosures or other information in connection with these Terms and Conditions or your use of interactive features or functions provided by Scotts Miracle-Gro (collectively, "Notices") electronically from Scotts Miracle-Gro. You agree that Scotts Miracle-Gro may send you electronic Notices by (a) e-mail to an e-mail address you provide to Scotts Miracle-Gro for Notices, and/or (b) by posting the Notices on a main page of its website or other webpage designated by Scotts Miracle-Gro for this purpose. You must check your designated e-mail address regularly for Notices from Scotts Miracle-Gro. All registrations, agreements, and terms will be completed electronically and will be deemed for all legal purposes to be in writing and legally enforceable as a signed writing. The delivery of any Notice from Scotts Miracle-Gro is effective when sent by Scotts Miracle-Gro, regardless of whether you read the communication when you receive it. You may withdraw your consent to receive notices electronically by discontinuing your use of the interactive features or functions provided by Scotts Miracle-Gro.

### **Modifications to Terms and Conditions and Miscellaneous**

Scotts Miracle-Gro may make changes or modifications to these Terms and Conditions. All changes to these Terms and Conditions shall take effective upon posting. The most current version of the Terms and Conditions will supersede all previous versions. You should review these Terms and Conditions before each use of an interactive feature or function. Your use of an interactive feature or function following any changes to these Terms and Conditions shall constitute your acceptance of the then posted Terms and Conditions.

These Terms of Use, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Scotts Miracle-Gro without restriction. If any of these terms or conditions shall be deemed invalid or unenforceable for any reason, the remainder of these terms and conditions shall remain enforceable and unaffected thereby.