



ROSES *and* PLANTS

Rev 110620

THE CONARD-PYLE COMPANY GROWING LICENSE AGREEMENT: NON-PROPAGATING

PLEASE READ THIS LICENSE AGREEMENT BEFORE ACCEPTING, UNPACKING, AND OR RECEIVING A SHIPMENT OF THE CONARD-PYLE COMPANY PLANT MATERIAL.

By accepting this Conard-Pyle Company order, and/or unpacking these Conard-Pyle Company plants, you, the customer shown on the shipping documents receiving this order (hereinafter "Licensee") accept the terms and conditions below. If you do not agree to the terms of this agreement, do not accept this order, and do not unpack the order. If this order is refused, promptly contact your sales representative.

This License Agreement is made between The Conard-Pyle Company (hereinafter "Licensor") and Licensee.

Whereas, Licensor is the owner U.S. Plant Patents and Patents Pending, and U.S. Trademarks and Trademarks Pending of the plant varieties listed in this agreement (hereinafter "Licensed Products"), and

Whereas, Licensee wishes to obtain for itself a license to grow and sell "Finished Plants" of the Licensed Product which includes all varieties of The Knock Out® Family of Roses and the Drift® Roses:

- The Blushing Knock Out® Rose 'Radyod' PP 14,700, CPBR 2,045
- The Coral Knock Out® Rose 'Radral' PP 19,803
- The Double Knock Out® Rose 'Radtko' PP 16,202, CPBR 3,104
- The Peachy Knock Out® Rose 'Radgor' PP 25,628
- The Petite Knock Out® Rose 'Meibebino' PP 30,811, CPBRAf, U.S. Utility Patent Pending
- The Pink Double Knock Out® Rose 'Radtkopink' PP 18,507, CPBR 3,757
- The Pink Knock Out® Rose 'Radcon' PP 15,070, CPBR 2,044
- The Rainbow Knock Out® Rose 'Radcor' PP 17,346, CPBR 3,444
- The Sunny Knock Out® Rose 'Radsunny' PP 18,562, CPBR 4,875
- The White Knock Out® Rose 'Radwhite' PP 20,273

- Apricot Drift® 'Meimirrote' PP 23,354, CPBR 5,389
- Coral Drift® 'Meidrifora' PP 19,148, CPBR 4,871
- Lemon Drift® 'Meisentmil' PP 20,635
- Peach Drift® 'Meiggili' PP 18,542, CPBR 4,873
- Pink Drift® 'Meijocos' PP 18,874, CPBR 4,874
- Popcorn Drift® 'Novarospop' PP 24,773, CPBR 5,391

- Red Drift® ‘Meigalpio’ PP 17,877, CPBR 4,872
- Sweet Drift® ‘Meiswetdom’ PP 21,612, CPBR 5,390
- White Drift® ‘Meizorland’ PP 28,054, CPBR 5,592

Now, therefore, the parties, for good and valuable consideration, receipt of which is hereby acknowledged, agree as follows:

1. Non-Exclusive License for Growing Finished Plants Only – Licensor hereby grants to Licensee a non-exclusive license only to grow into and sell as Finished Plants (“Finished Plants” is defined as plants that have reached a size and appearance appropriate for retail sale) the Licensed Products hereby delivered to Licensee. Licensee shall not convey in any cuttings or any other parts of the Licensed Products for any purposes whatsoever, including but not limited to, for reproduction by any manner, means, or method whatsoever. **ANY AND ALL FORMS OF PROPAGATION BY ANY AND ALL MEANS ARE STRICTLY PROHIBITED.**

LICENSEE AGREES THAT ALL PLANT STOCK OF LICENSED PRODUCTS RECEIVED UNDER THIS AGREEMENT IS INTENDED FOR RESALE WITHOUT UP-SHIFTING.

2. Plant Tags: Licensee Must Use Licensor’s Plant Tags With Finished Plants and Shall NOT Use Any Other Plant Tags – Licensor or its licensed vendor of Licensed Product to Licensee provides to Licensee one variety-specific plant tag for each individual Licensed Product purchased by Licensee. One tag must be attached to each Finished Plant shipped or otherwise conveyed by Licensee at the time it leaves Licensee’s premises. Licensee shall not sell, distribute, or ship any Finished Plant of any Licensed Product using any plant tags not provided to it by Licensor or Licensor’s licensed vendor, nor use any other trademarks, names, variety names or markings with Licensed Product except as allowed in paragraph #5 below. Further, Licensee is strictly prohibited from creating, printing, or producing plant tags, containers, pots or any type of packaging labels containing, reproducing, or displaying Licensor’s variety names and trademarks, images, or cultural information.
3. Limited Right to Use Licensee Name – If Licensee wishes to indicate that Licensee is the grower of the Finished Plant of the Licensed Product, Licensee may apply a label that reads “Grown under license from The Conard-Pyle Company by [Name of Licensee].” Such label shall consist only of the aforementioned plain text with no designs or embellishments (except Licensee may combine the aforementioned plain text with a bar code and/or retail pricing).
4. Licensee Is Prohibited From Using Licensor’s Trademarks, Plant Tags and/or Containers With Any Other Unlicensed Products – Licensor’s plant tags may only be used by Licensee with the original plants provided and only once they are ready to be sold as Finished Plants.
5. Re-Selling, Giving Away or Otherwise Distributing Licensor’s Plant Tags Or Containers Without Finished Plants Is Prohibited.
6. Containers For Finished Container Plant Sales – Licensee must sell Finished Container Plants in Licensor’s branded containers which are available from Licensor or its licensed vendor or an approved manufacturer of branded containers, or an approved distributor of branded containers. Licensor’s containers may only be used for Licensor’s plant varieties for which this Agreement applies (The Knock Out® Family of Roses and Drift® Roses). Branded containers are available in three sizes, which are all true capacity containers: one gallon, two gallon, and three gallon. The sole exception to this requirement is if Licensee pots Licensed Product in a trade #5 container or larger, in which case Licensee may select any type of pot from any vendor, provided that the container exhibits no graphic designs or writings and provided that the container has a minimum actual volume of 3.5 gallons. In other words, the trade #5 container or larger should be one solid color, void of any graphic designs, writings, logos, labels, stamps, images, etc.

7. Licensee agrees they will not provide, use and/or sell Patented Plants with labels, pots, devises or other containers that carry an additional brand or co-brand name. Licensee is prohibited from using Brand Trademarks on plant tags, containers, or any type of product packaging except that which is approved by Licensor for use with the Patented Plants.
8. Custom Packaging – In the case where Licensee purchased plants for the specific use of resale as bagged, packaged, wrapped or in a plantable fiber pot, the package and/or container and wrap around bag must be approved by Licensor prior to their use by Licensee.
9. Licensee Owns No Rights In Mutations – Licensee shall report to Licensor immediately any sport, bud mutation, or mutant found in the Licensed Products, whether upon receipt or while being grown into Finished Plants. Upon request of the Licensor, the Licensee shall provide the Licensor all requested material of the sport, bud mutation, or mutant. Any sport, bud mutation, or mutant found in the Licensed Product is and shall be the property of the Licensor, breeder or plant patent owner. Should Licensor elect to introduce any such sport or mutation into commerce, Licensor will pay to Licensee annually, on or before March 1, a sum equal to fifteen percent (15%) of all royalties received by Licensor on such commercialized sport or mutant during the prior year.
10. Quality Control – Licensee shall not ship, sell, or distribute Licensed Products as Finished Plants unless and until they are free of diseases and pests and properly grown to be of a size and appearance that is appropriate for retail sale.
11. Right of Inspection – Licensee shall allow Licensor or Licensor’s agents or representatives to inspect and inventory the Licensee’s premises and plantings of Licensed Product at any reasonable time and upon three days notice to ensure compliance with this License Agreement. Refusal to allow inspection shall result in the immediate termination of this License Agreement.
12. Termination – Upon breach by the Licensee of any terms of this License Agreement, the grant of rights to Licensee under this License Agreement is immediately terminated. In this event, or upon termination of this License Agreement, for any reason, Licensee agrees to destroy all plants, cuttings, buds, and other plant parts capable of reproduction of the Licensed Products and all plants, cutting, buds, and other plant parts capable of reproduction, originating from the existing plant matter. Licensor may also pursue all legal remedies available for the recovery of further damages, including without limitation, incidental, consequential, punitive, statutory, and infringement damages, lost profits, injunctive relief, attorneys’ fees and costs.
13. Choice of Forum, Applicable Law – This License Agreement shall be interpreted and governed under the laws of the Commonwealth of Pennsylvania. In any legal action arising out of this License Agreement, or arising from infringement of Licensor’s rights, Licensee hereby consents to the jurisdiction of the State Court or Federal Court of the Commonwealth of Pennsylvania.
14. Non-Assignability – Licensee may not assign this License Agreement without express prior approval from Licensor.
15. Severability – If any of the provisions of this License Agreement – are, or become, invalid or unenforceable, the remaining provisions shall continue to be fully effective.

ANY QUESTIONS REGARDING THIS AGREEMENT – CONTACT

The Conard-Pyle Company (610-345-5116)