

NOTICE TO ALL BUYERS AND SPECIAL LIMITATIONS OF WARRANTY: TRIPLOID HYBRID WATERMELON SEED AGREEMENT OF SALE

A. NOTICE: Triploid hybrid watermelons are sterile hybrids which characteristically produce fruits with few or no true seeds. Because the absence or relative absence of hard or true seeds in the flesh of the melon is its chief distinguishing characteristic, the triploid hybrid watermelon is often referred to as a “seedless” watermelon. Despite this popular perception, triploid watermelons often contain small, vestigial seeds. In addition, certain genetic, cultural and climatic factors are known to cause the formation of empty seed coats (small, white, immature seeds) and/or hard seeds in the flesh of the melons. Due to the wide variety of possible causes of hard seed formation, TRIPLOID HYBRID WATERMELONS ARE NOT GUARANTEED TO PRODUCE SEEDLESS FRUIT.

Triploid hybrid watermelon production requires a high level of grower sophistication. Triploid hybrid watermelons require a pollen source and bees to serve as pollen vectors. Triploid hybrids also require special care for satisfactory germination. Growers are encouraged to contact University extension personnel for government publications and information concerning recommended cultural practices. Nunhems USA, Inc., doing business as Bayer CropScience Vegetable Seeds (“BCS VS”) can also supply certain of this information on request. We suggest growers develop expertise in growing triploid hybrid watermelons prior to instituting large scale commercial production.

B. SPECIAL LIMITATION OF WARRANTY: ALL TRIPLOID HYBRID WATERMELON SEEDS ARE SOLD PURSUANT TO BCS VS' STANDARD TERMS AND CONDITIONS OF SALE. DESCRIPTIONS AND ILLUSTRATIONS OF TRIPLOID HYBRID WATERMELONS REPRESENT TRIPLOID HYBRID WATERMELONS AS GROWN UNDER FAVORABLE GROWING CONDITIONS IN FAVORABLE GROWING AREAS. APPEARANCE AND PERFORMANCE MAY VARY IN OTHER GEOGRAPHICAL LOCATIONS AND UNDER DIFFERENT GROWING CONDITIONS. BCS VS EXPRESSLY EXCLUDES ANY WARRANTY THAT THE TRIPLOID HYBRID WATERMELON SEED SOLD WILL PRODUCE “SEEDLESS” FRUIT. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

AGREEMENT OF ADDITIONAL TERMS AND CONDITIONS OF SALE - FOR WATERMELON AND MELON SEEDS/PLANTS SOLD OR TRANSFERRED BY NUNHEMS USA, INC., DOING BUSINESS AS BAYER CROPSCIENCE VEGETABLE

Bacterial Fruit Blotch (BFB) on Watermelon and Melon, caused by *Acidovorax avenae* subsp. *Citrulli* is a serious disease that has become a significant risk factor in many areas where watermelons and/or melons are grown. The pathogen causing BFB can be introduced into a field by infested seed, infected transplants, volunteer cucurbits, and mechanical means or naturally spread from alternate hosts. Experts in research do not fully understand how to insure that seed is completely free of BFB. They cannot treat seed to completely eliminate BFB. While it is impossible to conduct any testing procedures which will give 100% reliable results with regard to the presence of any seedborne BFB, BCS VS is testing all of its watermelon and melon seed lots. Consequently, BCS VS will have tested the number of seedlings from each lot as pursuant to the industry approved standards, and found no symptoms of BFB to be present within the known limits of detection. However, BCS VS does not assume any responsibility for the occurrence of same from planting seed, transplants or on the fruit produced.

Gummy Stem Blight (GSB) is caused by the fungus, *Didymella bryoniae*, which attacks watermelons, melons and other cucurbits. Yield loss due to GSB occurs as a result of rapid defoliation of vines, fruit infection and subsequent decay. GSB has become a significant risk in the area of watermelon and melon production. The pathogen causing GSB can be introduced into a field by infested seed, infected transplants, volunteer cucurbits, mechanical means or naturally spread from alternate hosts and is present in the environment in many growing areas. Experts in research do not fully understand how to insure that seed is completely free of GSB. They cannot treat seed to completely eliminate GSB. While it is impossible to conduct any testing procedures which will give 100% reliable results with regard to the identification of any seed borne GSB infection, BCS VS is using its best efforts to test and/or treat all of its watermelon and melon seed lots. Consequently, all watermelon or melon seed lots sold have been tested or treated for the eradication of GSB, pursuant to current industry standards. However, Nunhems does not assume any responsibility for the occurrence of same from planting seed, transplants or on the fruit produced.

Cucumber Green Mottle Mosaic Virus (CGMMV) is caused by a virus which attacks watermelons, melons, and other cucurbits. Early symptoms consist of vein clearing and crumpling of leaves. CGMMV has become a significant risk in the area of watermelon and melon field productions and especially greenhouse grown crop. The pathogen causing CGMMV can be introduced into a field or greenhouse by infested seed, infected transplants, volunteer cucurbits and mechanical means or naturally spread from alternate hosts, water, tools, and is present in the environment in many growing areas. Experts in research do not fully understand how to insure that seed is completely free of CGMMV. While it is impossible to conduct any testing procedures which will give 100% reliable results with regard to the identification of any seed borne CGMMV infection, BCS VS is using its best efforts to test and/or treat all of its watermelon and melon seed lots. Consequently, all watermelon or melon seed lots sold have been tested or treated for the eradication of CGMMV, pursuant to current industry standards. However, BCS VS does not assume any responsibility for the occurrence of same from planting seed, transplants or on the fruit produced.

BCS VS hereby represents and warrants that it has tested representative samples of all seed lots to be covered by this Agreement and has not detected the presence of BFB in any such representative samples. BCS VS represents and warrants that it has tested representative samples and has not detected the presence of GSB and CGMMV and/or it has treated the seed lot for the eradication of GSB and CGMMV. Notwithstanding the above, BCS VS CANNOT GUARANTEE THAT SUCH TESTS/TREATMENTS ARE TOTALLY CONCLUSIVE AND CANNOT GUARANTEE THAT THE SEEDS AND SEEDLINGS ARE FREE OF BFB OR GSB OR CGMMV and further, cannot guarantee that BFB, GSB, and CGMMV may not be introduced to such seeds and/or watermelon or melon plants from outside sources at a later time.

1. GROWER'S RELEASE OF ALL LIABILITY FOR BACTERIAL FRUIT BLOTCH, GUMMY STEM BLIGHT, AND CGMMV. Acknowledging the above, the GROWER still wishes to purchase or accept BCS VS watermelon and/or melon seeds or plants and the GROWER is willing to assume all risks of loss associated with BFB and GSB. Accordingly, GROWER hereby FULLY AND UNCONDITIONALLY RELEASES BCS VS, ITS DISTRIBUTORS OR DEALERS (COLLECTIVELY THE “SELLERS”) FROM ANY AND ALL LIABILITY WITH RESPECT TO THE PRESENCE OF BFB, GSB, AND CGMMV, ON OR WITHIN SUCH SEEDS OR PLANTS OR THE VULNERABILITY OF SUCH PRODUCTS TO BFB OR GSB. GROWER ACKNOWLEDGES AND AGREES THAT SELLERS SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY LOSSES OR DAMAGES RELATING IN ANY WAY TO BFB, GSB, OR CGMMV. UNDER ANY LEGAL THEORY INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR STRICT PRODUCTS LIABILITY SELLERS acknowledge that all other aspects of its express warranty, as contained on its label, do apply, and that any waiver or limitation on the Sellers express warranty resulting from the terms and conditions of this Agreement, only apply to the presence on or within, or vulnerability of, such seeds and plants to BFB or GSB. GROWER acknowledges that contamination may occur in a transplant house, in the field, or under circumstances beyond the control of Sellers.

2. GROWER'S AGREEMENT NOT TO RESELL SEEDS OR PLANTS. In consideration for Sellers agreeing to sell or provide watermelon and/or melon seeds or plants to GROWER, GROWER hereby agrees that it/he/she will only use such seeds or plants for plantings on its/his/her own holdings, and will not, under any circumstances, sell, transfer, distribute or in any way dispose of any such seeds or plants grown from the seeds, with or without consideration, to any third party.

3. GROWER'S INDEMNIFICATION AGREEMENT. GROWER acknowledges that in the event it/he/she breaches the terms and conditions of paragraph 2 of this Agreement, with respect to the distribution of any such watermelon seeds or plants to a third party, Sellers could incur liability to such third parties. THEREFORE, GROWER HEREBY UNCONDITIONALLY AGREES TO DEFEND AND INDEMNIFY SELLERS, FROM ANY LOSS, LIABILITY, OR DAMAGE WHICH SELLERS, MAY INCUR, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES, RELATING TO ANY CLAIM BY A THIRD PARTY WHO RECEIVED ANY PORTION OF THE WATERMELON OR MELON SEEDS OR PLANTS WHICH ARE COVERED BY THIS AGREEMENT AS SOLD OR PROVIDED BY SELLERS TO GROWER.

4. GROWER UNDERSTANDS THIS AGREEMENT. GROWER represents and warrants that it/he/she has consulted with or had an opportunity to consult with an attorney, and that GROWER fully understands the meaning and legal effect of this Agreement.

5. ALL OTHER TERMS OF THE NUNHEMS LABEL APPLY. Except as expressly provided within this Agreement, all remaining terms, disclaimers, limitations and conditions of purchase as disclosed and set forth on the BCS VS label and on the BCS VS LIMITATION OF WARRANTY AND LIABILITY regarding liability shall apply to all GROWER'S purchases or acceptance of watermelon and/or melon seed and plants.

6. CHOICE OF LAW/CHOICE OF FORUM/NOTICE OF REQUIRED ARBITRATION, CONCILIATION, MEDIATION. The parties agree that this Agreement shall be construed in accordance with the laws of the State of Idaho. Under the seed laws of several states ARBITRATION, CONCILIATION OR MEDIATION is required as prerequisite to maintaining a legal action based upon the failure of seed that this notice relates to produce as represented. BUYER SHOULD CONSULT ITS STATE DEPARTMENT OF AGRICULTURE for specific filing requirements as soon as BUYER learns of the facts upon which a claim is to be based before any legal action is initiated. It is also agreed that any litigation by and between GROWER and Sellers, relating to the sale or acceptance of all such watermelon and/or melon seed or plants hereunder, shall take place in Ada County, Idaho, USA.

7. ATTORNEY'S FEES. In the event that Sellers enforce any terms of this Agreement in any litigation with GROWER, Sellers shall be entitled to recover reasonable attorney's fees from GROWER.

8. This Agreement shall be valid from November 1, 2018 until October 31, 2019.

I HAVE READ AND UNDERSTOOD THIS RELEASE AGREEMENT AND I AGREE TO BE BOUND BY ALL OF ITS TERMS, AND I AM AUTHORIZED TO SIGN THIS AGREEMENT FOR GROWER/CUSTOMER, NAMELY:

(Signature)

(Printed)

Date: _____

(Address)

(City)

(State)

(Zip Code)

(Area Code and Telephone Number)

Please read and understand this agreement. Then fill in all requested information above and sign as indicated.

Return the signed document to Twilley Seed Company. Email: twilley@twilleyseed.com Fax: 864-227-5108
Mail: Otis S. Twilley Seed Co., Inc. 121 Gary Rd. Hodges, SC 29653

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FOR OFFICE USE ONLY

Variety	Lot Number

BCS US Authorized Representative or Distributor/DEALER Authorized Representative

(Signature)

(Printed)

Date: _____

Twilley Order #