

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 infected 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 infected 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



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Dear Watermelon/Melon Grower:

Several popular Watermelon and Melon varieties have become the property of Nunhems, a prominent breeding company from Europe which now does business in the USA.

Your recent order contains one or more of these varieties.

Because it is still not technically possible to prevent crop damage due to certain diseases that continue to be a problem in Melon and Watermelon, Nunhems is requiring a special Waiver Agreement. Each order for Nunhems' Melon or Watermelon varieties will require a signed Nunhem Waiver listing those varieties before they can be shipped.

Nunhems is requiring an additional, second Waiver for Triploid Watermelon shipments. A copy of this is also attached. This Agreement is good for the entire season or until revised, so signing it now will get you ready for the season ahead even if your current order contains no triploids.

There is an additional, revised Twilley Waiver agreement needed as well. The separate Twilley agreement covers all Watermelon / Melon varieties sold by Twilley and is good for the whole season or until a new revision becomes necessary. The Twilley Waiver is also enclosed.

Please return signed copies of both the Nunhem Waiver and the Twilley Waiver as soon as possible so we can ship your Nunhem varieties and also to be ready for the season on all the other varieties of Melon / Watermelon.

Please accept our apologies for this inconvenience, but we trust that you understand the situation and thank you for your cooperation.

Sincerely,

OTIS S. TWILLEY SEED COMPANY, INC.

3 encl.: Nunhems Waiver, Triploid Waiver, Twilley Revised Waiver.

Order #

Customer #

Variety

Nunhem Lot Number

Variety	Nunhem Lot Number

FOR OFFICE USE ONLY

BCS US Authorized Representative or Distributor/DEALER Authorized Representative

(Signature)

(Printed)

Date: _____ Twilley Order #