

Conditions of Sale and Special Notices — All Prices Subject to Change Without Prior Notice

NOTICE ARBITRATION/CONCILIATION/MEDIATION REQUIRED BY SEVERAL STATES

•••Under the seed laws of several states, ARBITRATION, MEDIATION OR CONCILIATION IS REQUIRED as a prerequisite to maintaining a legal action upon the failure of seed to which this notice is attached to produce as represented. THE CONSUMER SHALL FILE A COMPLAINT (sworn for AR, FL, IN, MS, SC, TX, WA; signed only CA, ID, ND, SD) along with the required filing fee (where applicable) with the Commissioner/Director/Secretary of Agriculture, Seed Commissioner, or Chief Agricultural Officer within such time to permit INSPECTION OF THE CROPS, plants or trees by the designated agency and the seedsman from whom the seed was purchased. A COPY OF THE COMPLAINT shall be sent to the seller by certified or registered mail or as otherwise provided by state statute. •••Contractual arbitration from all other states, Canada, Mexico and other foreign countries:STANDARD ARBITRATION CLAUSE. •••Any controversy or claim arising out of or relating to the planting or use of this seed, the sales contract or the breach thereof, shall be settled by BINDING ARBITRATION in accordance with the commercial arbitration rules of the American Arbitration Association. •••The Uniform Commercial Code as adopted in South Carolina shall govern all matters arising from the sale hereunder. •••Any dispute not subject to arbitration and any action to enforce an arbitration award arising from the sale hereunder shall be brought and litigated in a court located in the county of Greenwood, SC, USA to the exclusion of the courts of any other county, state or country.

LIMITATION OF WARRANTY AND REMEDY

•••1. TWILLEY SEED CO. INC., to the extent required by law, warrants that the seeds, bulbs, or plants sold are as described on the container label and in its catalog within recognized tolerances. THIS EXPRESS WARRANTY EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No other representations are made other than for identification purposes. Seller neither assumes, makes, nor authorizes any person to make any other representation or warranty on its behalf, or to assume for it any liability in connection with the sale or use of the items sold hereunder. •••2. It is further agreed that in the event of resale of any of the items sold hereunder by purchaser, SELLER DOES NOT ADOPT OR ASSUME ANY WARRANTIES EXPRESS OR IMPLIED GIVEN BY PURCHASER. Purchaser further agrees to defend, indemnify and hold harmless the seller against claims, actions, proceedings or other liabilities of any nature whatsoever, including strict liability or negligence of seller. •••3. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY, WHETHER BASED ON CONTRACT, ON THE UNIFORM COMMERCIAL CODE, ON NEGLIGENCE, OR ON ANY OTHER THEORY OF LIABILITY WHATSOEVER, FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE ITEMS SOLD HEREUNDER, NOR FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES UNDER ANY AND ALL THEORIES OF LIABILITY AND REGARDLESS OF THE NATURE, CAUSE OR EXTENT OF THE LOSS OR DAMAGE SUSTAINED. •••4. It is presumed that purchaser will inspect the items sold hereunder within a reasonable time following receipt of shipment. No liability hereunder or otherwise shall be asserted against seller unless the purchaser or user reports any conditions that might lead to a complaint promptly to the seller following discovery of such conditions, but in no event to exceed 30 days. Failure to so inspect or promptly notify seller shall result in the waiver of purchaser's rights of recovery, and purchaser shall be deemed to have accepted the items sold and to have released seller from liability.

WAIVER AGREEMENT CONCERNING DISEASES IN MELON AND WATERMELON — TO BE SIGNED BY GROWER

NOTICE, WAIVER, RELEASE AGREEMENT AND ADDITIONAL TERMS AND CONDITIONS OF SALE

CONCERNING ALL MELON AND WATERMELON SEED PURCHASED OR TRANSFERRED FROM OTIS S. TWILLEY SEED COMPANY, INC. (TWILLEY)

THIS AGREEMENT ADDRESSES THE RISK OF 3 SERIOUS DISEASES THAT ARE A SIGNIFICANT RISK AND CAN DESTROY MELON AND WATERMELON CROPS. THOSE WHO WISH TO RECEIVE SUCH SEED MUST AGREE TO TWILLEY'S ADDITIONAL CONDITIONS OF SALE AND WAIVERS OF LIABILITY CONTAINED HEREIN.

NOTICE: Bacterial Fruit Blotch (BFB) on Watermelon and Melon, caused by *Acidovorax avenae* subsp. *Citrulli* is a serious disease. The symptoms on young seedlings appear as dark water-soaked lesions on lower leaf surfaces. These later turn necrotic and may have chlorotic halos surrounding dead tissue. Lesions generally appear on the hypocotyls of young seedlings, resulting in the wilting and death of these young plants. Fruit infections that occur later in the growing cycle can result in lesions on the top surface of the fruits, appearing as small, water-soaked areas, which under the right conditions of high temperature and humidity, enlarge rapidly to cover most of the surface of the fruits. Fruit decay often follows. This later condition of the disease cycle could lead to significant economic losses to the grower. In cases where the pathogen is carried in the seed, the typical lesions described above will appear on the young seedlings within 7 days after seedling emergence. If no symptoms are observed on the young seedlings within three (3) weeks after emergence, it is unlikely that the bacterium is carried on the seed. Any subsequent infection is most likely from other sources. It is imperative that each grower inspects the young plants during this early stage, in order to determine the presence or absence of these symptoms and to mitigate any potential economic losses. Symptoms that appear on plants in the early stages of growth, and especially those symptoms caused by secondary infections, may not be evident on new foliar parts as the plants develop. The pathogen, however, may still be alive in infected tissues, and may infect the fruits if favorable conditions of temperature and humidity prevail. Do not retain any plants that show any symptoms at any time.

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.

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 pathogens causing BFB, GSB and CGMMV can be introduced into a field, growing operation or greenhouse by infected seed, infected transplants, volunteer cucurbits, other host plants, mechanical means, water or tools, or naturally spread from alternate hosts. These pathogens are known to be present in the environment and may be present in any growing area.

Experts in research do not fully understand how to insure that seed is completely free of BFB, GSB or CGMMV. They cannot treat seed to completely eliminate these diseases. It is impossible to conduct any test which will give 100% reliable results with regard to the presence of any seed-borne BFB, GSB or CGMMV. Many, but not all, breeders and seed producers are testing and/or treating their watermelon and melon seed lots for BFB, GSB or CGMMV, pursuant to the industry approved standards, when available, and have found no symptoms of BFB, GSB or CGMMV to be present, within the known limits of detection, in lots they have offered for sale. However, in the absence of any 100% reliable method, they do not assume, and Twilley does not assume, any responsibility for the occurrence of BSB, GSB or CGMMV from planting seed, transplants or on the fruit produced.

TWILLEY 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.

WAIVER, RELEASE AND ADDITIONAL TERMS AND CONDITIONS OF SALE

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 watermelon and/or melon seeds or plants and the GROWER is willing to assume all risks of loss associated with BFB and GSB and CGMMV. Accordingly, GROWER hereby FULLY AND UNCONDITIONALLY RELEASES TWILLEY, 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, GSB OR CGMMV. 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 TWILLEY LABEL AND CATALOG APPLY. Except as expressly provided within this Agreement, all remaining terms, disclaimers, limitations and conditions of purchase as disclosed and set forth on the TWILLEY label and within the TWILLEY catalog and on the TWILLEY LIMITATION OF WARRANTY AND REMEDY 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 South Carolina. 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 Greenwood County, SC, 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 date of GROWER's signature.

•••Please sign and date the front side of this order form•••