

**AGREEMENT ON ADDITIONAL TERMS AND CONDITIONS OF SALE
- WATERMELON AND MELON SEEDS AND PLANTS**

NOTICE: This is a legal agreement between Dealer/Distributor (as defined below) and Nunhems USA, Inc.

This Agreement (as defined below) includes the first three pages of the Agreement (“**Cover Document**”) as well as the following 2 documents:

- A. Notice and Special Limitations of Warranty: Triploid Hybrid Watermelon Seed
and
- B. Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants with Attachment A thereto (The Grower through Dealer/Distributor version of the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants)

Please read this entire Agreement before signing below. If the terms are not acceptable, do not sign this Agreement. If you do not understand any of the terms of this Agreement, consult an attorney. No watermelon or melon seeds or plants will be delivered to Dealer/Distributor without Nunhems receiving an executed copy of this Agreement.

By my signature below:

1. I acknowledge that I have received, read, and understood this Cover Document and the two attached documents, all three of which form the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants (the “**Agreement**”):
 - Notice and Special Limitations of Warranty: Triploid Hybrid Watermelon Seed _____ (please initial)
 - Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants _____ (please initial)
2. I acknowledge that I am 18 years of age or older and am fully authorized by Dealer/Distributor to enter into and legally bind Dealer/Distributor (named below); and
3. I recognize that the documents in this Agreement **contain important obligations, releases, notices, disclaimers, indemnifications, and waivers**; and
4. I acknowledge the recommendation from Nunhems that I consult with an attorney to answer any questions that I may have regarding these documents prior to executing this Agreement

and that I represent and warrant that I have been given the opportunity to do so and that I understand this Agreement; and

5. Dealer/Distributor agrees to be bound by all of the terms and conditions set forth herein (including without limitation, in the two documents attached hereto) in connection with any and all transfers of watermelon or melon seeds or plants from Nunhems, as an integral part of Nunhems' General Terms and Conditions of Sale found at <https://www.nunhems.com/us/en/legal/Terms-Conditions-Sale.html>.

General Provisions:

- (a) **Entire Agreement:** This Agreement, along with Nunhems' General Terms and Conditions of Sale (including the documents referenced therein), forms the entire agreement as to the terms and conditions of sale between Nunhems and Dealer/Distributor with respect to all Nunhems' watermelon and melon seeds and plants, with the addition of any included in the applicable price list and the price, amount and variety of seed, and delivery dates, or any other order-specific terms and conditions, all of which will be agreed to in writing by Dealer/Distributor and Nunhems for each of those respective orders. Dealer/Distributor agrees that Dealer/Distributor is not relying on and shall not rely on any statement, agreement, writing, warranty, or representation, other than those contained in this Agreement and Nunhems' General Terms and Conditions of Sale (including the documents referenced therein). Where this Agreement conflicts with Nunhems' General Terms and Conditions of Sale, this Agreement shall prevail.
- (b) **No Amendment:** This Agreement may not be amended in any way except in writing signed by an authorized representative of both parties that specifies its intent to amend this Agreement by name.
- (c) **Severability:** If any provision of this Agreement is held to be unenforceable, all other terms of this Agreement shall remain in effect and shall be fully enforceable.
- (d) **Facsimiles and Counterparts:** Electronic signatures and scanned or facsimile copies of any signed original Agreement transmitted electronically or re-transmitted shall be considered original signature pages for all purposes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signatures appears on the page immediately following this]

I am authorized to sign this Agreement for the Dealer/Distributor named below.

Dealer/Distributor - _____
(Person or Entity Printed Name)

(Signature)

(Date)

(Printed Name)

(Address)

(Address) (City) (State) (Zip Code)

(Area Code and Telephone
Number)

Nunhems Customer Service can be reached at:

nunhems.customerservice.us@vegetableseeds.basf.com
1200 Anderson Corner Road, Parma, ID 83660

NOTICE AND SPECIAL LIMITATIONS OF WARRANTY: TRIPLOID HYBRID WATERMELON SEED

- 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. Dealer/Distributor is encouraged to contact University extension personnel for government publications and information concerning recommended cultural practices. Nunhems USA, Inc. (“Nunhems”) can also supply certain of this information on request. Please contact your local Nunhems Sales Representative. Nunhems suggests that Dealer/Distributor 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 Nunhems’ General Terms and Conditions of Sale and the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants of which this document forms a part.

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.

Nunhems 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.

Dealer/Distributor’s signature on the front page of the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants is evidence that Dealer/Distributor has read this Notice and Special Limitation of Warranty and that Dealer/Distributor agrees that Dealer/Distributor will be bound by it.

ADDITIONAL TERMS AND CONDITIONS OF SALE - WATERMELON AND MELON SEEDS AND PLANTS

_____ (“**Buyer**”) wishes to purchase and Nunhems USA, Inc. (“**Nunhems**”), is willing to sell or transfer to Buyer Nunhems - branded watermelon and/or melon seeds and/or plants grown from those seeds (hereinafter referred to as the “**Products**”) under the terms and conditions outlined in these Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants (these “**Additional Terms**”). Therefore, Buyer and Nunhems agree, for good and valuable consideration, including, but not limited to, the sales price of the Products and such Products themselves, that the following terms and conditions of sale shall govern every purchase or acquisition of the Products by Buyer in addition to the terms and conditions of Nunhems’ General Terms and Conditions of Sale available at <https://www.nunhems.com/us/en/legal/Terms-Conditions-Sale.html> from the date of signature until these Additional Terms are replaced by the parties or effective date of notice of rescission in writing received by Buyer or by Nunhems:

1. **LIMITATIONS ON RE-SALE OR TRANSFER**

1.1 Product Usage: Buyer is permitted to either re-sell the Products as is or to plant and grow seed Products into plants in the first -growing season after purchase for sale solely for the purpose of growing a single commercial crop of watermelons or melons for end use.

1.2 Prohibited Sales: Buyer agrees that the following types of re-sale, transfer or donation of the Products are prohibited (“**Prohibited Sales**”) and would be a material breach of these Additional Terms and Nunhems would have the right to terminate this Agreement, any sales of watermelon or melon seeds or plants, and/or any sales of any kind to Buyer with immediate effect upon written notice to Buyer:

sales, transfers, or donations to any person or entity who has NOT signed a grower-specific Agreement on Additional Terms and Conditions of Sale – Watermelon and Melon Seeds and Plants (each an “**Agreement on Additional Terms**”).

Buyer agrees that it will indemnify, defend and hold Nunhems harmless from and against any and all claims arising from Prohibited Sales, whether the legal theory forming the basis of such claim involves contract, tort, negligence, strict liability or otherwise.

1.3 Authorized Sales or Transfers: The following types of re-sale, transfer or donation of the Products are authorized (“**Authorized Sales**”): Sales, transfers, or donations to a person or entity who has signed an Agreement on Additional Terms (each such party is a “**User**”).

1.4 Buyer’s Duty to Notify of Terms and Conditions of Sale Prior to Authorized Sale: **PRIOR** to any Authorized Sale, Buyer agrees to notify any person or entity receiving the Products of the terms and conditions of sale in these Additional Terms by requiring such person to sign an Agreement on Additional Terms. Buyer must obtain a copy of the signed Agreement on Additional Terms **PRIOR** to sale, transfer or delivery of any Products to any person or entity. Executed Agreements on Additional Terms must be sent to Nunhems USA Customer Service (nunhems.customerservice.us@vegetableseeds.basf.com), or via U.S. mail or nationally recognized courier service at the address below no later than ten (10) business days after delivery or shipment of seed (whichever comes first). A blank copy of the grower-specific Agreement on Additional Terms and

Conditions of Sale – Watermelon and Melon Seeds and Plants is attached hereto as Attachment A and can also be obtained at www.nunhems.com/us/en/legal/ or upon request from Nunhems Customer Service, (nunhems.customerservice.us@vegetableseeds.basf.com) or at 1200 Anderson Corner Road, Parma, ID 83660. For any other questions, please contact your local Nunhems Sales Representative.

2. RISK OF NONPERFORMANCE UNDER FIELD CONDITIONS:

2.1 Risk of Nonperformance: Failure of seed to germinate and/or yield and quality reduction may occur as a result of environmental factors specific to the Products including, without limitation, cold temperatures, heat, excess moisture, drought, wind and hail, disease, pests, inadequate fertility, misapplication of pesticides, planting date, planting location, soil type, irrigation practices, insects, disease and weed pressures and other acts of God. **All such risks of non-performance and/or reduced performance of the Products are assumed by the Buyer.**

2.2 Bacterial Fruit Blotch on Watermelon and Melon Notice: Bacterial Fruit Blotch (“BFB”) on watermelon and melon, *Acidovorax avenae* subsp. *citrullii*, is a serious disease that has become a significant risk in watermelon and melon cultivation. The pathogen causing BFB can be introduced into a field by infected seed, infected transplants, volunteer cucurbits, and mechanical means or can be naturally spread from alternate hosts. Researchers do not fully understand how to ensure 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 identification of any seed borne BFB infection, Nunhems is using its commercial best efforts to test all of its watermelon and melon seed lots. Consequently, Nunhems will have tested a sample number of seedlings from each lot pursuant to the industry approved standards and will have found no symptoms of BFB to be present within the known limits of detection prior to selling each lot. However, **Nunhems does not assume any responsibility for the occurrence of BFB from planting seed, transplants or on the fruit produced.**

2.3 Gummy Stem Blight Notice: 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 watermelon and melon production. The pathogen causing GSB can be introduced into a field by infected seed, infected transplants, volunteer cucurbits, and mechanical means or can be naturally spread from alternate hosts and is present in the environment in many growing areas. Researchers do not fully understand how to ensure 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, Nunhems is using its commercial best efforts to test and/or treat all of its watermelon and melon seed lots. Consequently, all watermelon or melon seed lots sold will have been tested or treated for the eradication of GSB, pursuant to current industry standards, prior to sale. However, **Nunhems does not assume any responsibility for the occurrence of GSB from planting seed, transplants or on the fruit produced.**

2.4 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 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 can be naturally spread from alternate hosts, water, or tools, and is present in the environment in many growing areas. Researchers do not fully understand how to ensure 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, Nunhems is using commercially reasonable efforts to test and/or treat all of its watermelon and melon seed lots.

Consequently, all watermelon or melon seed lots sold will have been tested or treated for the eradication of CGMMV, pursuant to current industry standards, prior to sale. However, ***Nunhems does not assume any responsibility for the occurrence of CGMMV from planting seed, transplants or on the fruit produced.***

2.5 Assumption of Risks: Nunhems and Buyer acknowledge that this sale or transfer of the Products is a commercial transaction. Therefore, as a condition of sale or transfer of all Products, Buyer acknowledges that it has been informed of the risk of non-performance of the Products and the risks associated with the potential presence of BFB, GSB, and CGMMV, and ***Buyer hereby waives any right to assert any claim against Nunhems whether for breach of contract, tort, negligence or otherwise in the event of the foregoing risks. Buyer also releases Nunhems from any and all claims relating to BFB, GSB, and CGMMV with respect to all Products.*** This waiver has been accounted for in the price of the Products.

3. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

3.1 Exclusive Express Warranty: Nunhems hereby states, as its sole and exclusive warranty that the Products conform to label descriptions that are required by State and Federal law when shipped from or delivered at Nunhems' shipping facility.

Nunhems makes no other express warranty.

3.2 Disclaimer of Warranty: ***Nunhems disclaims all implied warranties*** including without limitation any implied warranty of merchantability and any implied warranty of fitness for a particular purpose. To the extent permitted by state and federal seed law, ***all Products are sold "AS IS"***.

3.3 Exclusive Remedy: ***Buyer's exclusive remedy and Nunhems' sole liability for loss or damage arising from purchase or use of the Products shall be an amount equal to the price paid, if any, for the relevant Products used.*** Additionally, if any of the Products are repackaged, all remedies against Nunhems will be waived, including return of the purchase price, and Nunhems will have no liability whatsoever to any other party.

3.4 Limitation of Liability: Buyer may not recover any amount for incidental or consequential damages, including loss of profit, loss of yield, amounts expended in using or growing such products, or for costs associated with harvesting the produce of the products. This limitation of liability shall be applicable to any claim presented to Nunhems whether the legal theory forming the basis of such claim involves contract, tort, negligence, strict liability or otherwise.

Buyer agrees that if Nunhems refunds an amount equal to the price Buyer paid, if any, for the relevant Products, this limitation of liability will not have failed of its essential purpose.

3.5 Prompt Notice of Claim: Nunhems must have prompt notice of any claim arising from the use of the Products so that an immediate inspection of the allegedly affected seed and/or crop can be made. Buyer shall notify your local Sales Representative or Nunhems Customer Service at nunhems.customerservice.us@vegetableseeds.basf.com immediately, but no later than seven (7) business days after the defect or other basis of such claim is discovered or should have been discovered or after the date on which Buyer was notified of a third-party claim (as applicable). Any claims made for which Nunhems did not receive notice within seven business (7) days shall be barred.

3.6 Statute of Limitation: Any action against Nunhems for breach of contract and any claim for breach of warranties must be commenced within one (1) year after the cause of action accrues. All actions shall be barred after such time.

4. **RELEASE AND INDEMNITY:** With respect to all Products purchased by Buyer, **Buyer agrees to assume the risk and take the sole responsibility** that such seeds and plants may fail to perform as expected including, but not limited to, failure to size or yield as expected or that such seeds and plants may be infected with disease including, without limitation, the bacteria that causes BFB, the fungus that causes GSB, or the virus that causes CGMMV.

Buyer hereby releases, indemnifies and agrees to defend and hold Nunhems harmless from and against any and all claims of whatever kind or nature related to such non-performance or disease. Buyer's obligation to indemnify, defend and hold Nunhems harmless for any claims related to the above shall continue even if Buyer transfers such seeds or plants grown from such Nunhems Watermelon/Melon Seed Products. Buyer's obligation to indemnify, defend and hold Nunhems harmless shall include, but not be limited to, reasonable attorneys' fees and costs incurred by Nunhems.

Buyer's obligation to indemnify, defend and hold Nunhems harmless shall not include any claims for breach of the express warranty set forth in Section 3.1 of these Additional Terms or any claims arising out of NUNHEM's gross negligence.

By executing an Agreement on Additional Terms prior to an Authorized Sale, **any person or entity receiving the Products pursuant to an Authorized Sale thereby agrees to indemnify and hold Nunhems harmless for such non-performance.**

Notwithstanding the indemnity provisions of these Additional Terms, in the event Buyer is named by a subsequent buyer or transferee as a defendant in a legal action based upon seed performance pertaining to the Products sold or transferred to Buyer pursuant to these Additional Terms, *provided* that in connection with the Products on which such legal action is based, Buyer obtained a validly executed Agreement on Additional Terms **PRIOR** to an Authorized Sale and *provided* that Buyer did not tamper with the Products in any way (including without limitation, re-packaging) or take any actions that would result in any independent liability, and did not make any representations as to the Products that vary in any way from Nunhems' labels and published sales materials, Nunhems shall indemnify, defend and hold Buyer harmless from any such claims.

Dealer/Distributor's signature on the front page of the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants is evidence that Dealer/Distributor has read these Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants and that Dealer/Distributor agrees to be bound by them.

**AGREEMENT ON ADDITIONAL TERMS AND CONDITIONS OF SALE FOR
WATERMELON AND MELON SEEDS AND PLANTS**

NOTICE: This is a legal agreement between Grower and Dealer/Distributor (each as specified below)

This Agreement (as defined below) includes the first three pages of the Agreement (“**Cover Document**”), as well as the following two documents:

- A. Notice and Special limitations of warranty regarding Triploid Hybrid Watermelon Seed
and
- B. Additional Terms and Conditions of Sale - Watermelon and Melon Seeds

Please read this entire Agreement before signing below. If the terms are not acceptable, do not sign this Agreement and do not accept any Nunhems watermelon or melon seeds or plants. If you do not understand any of the terms of this Agreement, consult an attorney.

By my signature and initials below:

1. I acknowledge that I have received, read, and understood this Cover Document and the two attached documents, all three of which form the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants (the “**Agreement**”):
 - Notice and Special Limitations of Warranty: Triploid Hybrid Watermelon Seed
_____ (please initial)
 - Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants
_____ (please initial)
2. I acknowledge that Nunhems, USA, Inc., is an intended third-party beneficiary of this Agreement and that, as such, has the right to directly enforce this Agreement as if it were a signatory hereto; and
3. I acknowledge that I am 18 years of age or older and am fully authorized by Grower to enter into and legally bind Grower to this Agreement; and
4. I recognize that the documents in this Agreement **contain important obligations, releases, notices, disclaimers, indemnifications, and waivers**; and
5. I acknowledge the recommendation above that I consult with an attorney to answer any questions that I may have regarding these documents prior to executing this Agreement and

that I represent and warrant that I have been given the opportunity to do so and that I understand this Agreement; and

6. Grower agrees to be bound by all of the terms and conditions set forth herein (including without limitation, in the two documents attached hereto) in connection with any and all purchases of Nunhems watermelon or melon seeds or plants, as an integral part of Nunhems' General Terms and Conditions of Sale found at <https://www.nunhems.com/us/en/legal/Terms-Conditions-Sale.html>.

General Provisions:

- (a) **Entire Agreement:** This Agreement, along with Nunhems' General Terms and Conditions of Sale (including the documents referenced therein), forms the entire agreement as to the terms and conditions of sale between Dealer/Distributor and Grower with respect to all Nunhems watermelon and melon seeds and plants, with the addition of any included in the applicable price list and the price, amount and variety of seed, and delivery dates , or any other order-specific terms and conditions, all of which will be agreed to in writing by Grower and Dealer/Distributor for each of those respective orders. Grower agrees that Grower is not relying on and shall not rely on any written or verbal statement, agreement, warranty, or representation, other than those contained in this Agreement and Nunhems' General Terms and Conditions of Sale (including the documents mentioned therein). Where this Agreement conflicts with Nunhems' General Terms and Conditions of Sale, this Agreement shall control.
- (b) **No Amendment:** This Agreement may not be amended in any way except in writing signed by an authorized representative of both parties that specifies its intent to amend this Agreement by name.
- (c) **Severability:** If any provision of this Agreement is held to be unenforceable, all other terms of this Agreement shall remain in effect and shall be fully enforceable.
- (d) **Facsimiles and Counterparts:** Electronic signatures and scanned or facsimile copies of any signed original Agreement transmitted electronically or re-transmitted shall be considered original signature pages for all purposes. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature appears on the page immediately following this]

Dealer/Distributor: _____

Authorized Representative

(Signature)

(Printed Name and Title)

Date: _____

Grower: _____

I am authorized to sign this Agreement for the "**Grower**" named above.

(Person or Entity Printed Name)

(Signature)

(Date)

(Printed Name)

(Title)

(Address)

(Address)

(City)

(State)

(Zip Code)

(Area Code and Telephone
Number)

**NOTICE AND SPECIAL LIMITATIONS OF
WARRANTY: TRIPLOID HYBRID WATERMELON
SEED**

- 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. Grower is encouraged to contact university extension personnel for government publications and information concerning recommended cultural practices. Nunhems USA, Inc. (“Nunhems”) can also supply certain of this information on request. Please contact your dealer/distributor or your local Nunhems sales representative. Nunhems suggests that Grower 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 Nunhems’ General Terms and Conditions of Sale and the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants of which this document forms a part.

Descriptions and illustrations of triploid hybrid watermelons represent triploid hybrid watermelons are as grown under favorable growing conditions in favorable growing areas. Appearance and performance may vary in other geographical locations and under different growing conditions.

Nunhems 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.

Grower’s signature on the front page of the Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants is evidence that Grower has read this Notice and Special Limitation of Warranty and that Grower agrees to be bound by it.

ADDITIONAL TERMS AND CONDITIONS OF SALE – NUNHEMS' WATERMELON AND MELON SEEDS AND PLANTS

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 ensure 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, Nunhems USA, Inc. (“**Nunhems**”) is testing all of its watermelon and melon seed lots. Consequently, Nunhems will have tested the number of seedlings from each lot pursuant to the industry approved standards and found no symptoms of BFB to be present within the known limits of detection. However, ***Nunhems does not assume any responsibility for the occurrence of BFB 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 ensure 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, Nunhems is using commercially reasonable 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 GSB 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 ensure 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, Nunhems is using commercially reasonable 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, ***Nunhems does not assume any responsibility for the occurrence of CGMMV from planting seed, transplants or on the fruit produced.***

Nunhems hereby represents and warrants that it has tested representative samples of all seed lots to be covered by these Additional Terms and Conditions of Sale –Watermelon and Melon Seeds and Plants (“**Additional Terms**”) in accordance with current industry standards and has not detected the presence of

BFB in any such representative samples. Nunhems represents and warrants that it has tested representative samples in accordance with industry standards 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 in accordance with industry standards. Notwithstanding the above, ***Nunhems cannot and does not warrant that such tests or treatments are totally conclusive and cannot and does not warrant that the seeds and seedlings are free of BFB, GSB, or CGMMV and further, cannot guarantee, and hereby disclaims any express or implied warranty, that BFB, GSB, and CGMMV will not be introduced to such watermelon or melon seeds or 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, Grower still wishes to purchase or accept Nunhems' watermelon and/or melon seeds or plants and Grower is willing to assume all risks of loss associated with BFB, GSB, and CGMMV.

Accordingly, ***Grower hereby fully and unconditionally releases Nunhems, its distributors and dealers (individually and 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, GSB and CGMMV. 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 any express warranty, as contained on product labels, do apply, and that any waiver or limitation on the Sellers' express warranty resulting from the terms and conditions of these Additional Terms only apply to the presence on or within, or vulnerability of, such seeds and plants to BFB, GSB, and CGMMV.

Grower acknowledges that contamination may occur in a transplant house, in the field, or under circumstances beyond the Sellers' control.

2. Grower's Agreement Not To Resell, Transfer, or Distribute Seeds Or Plants.

In consideration for Sellers agreeing to sell or provide watermelon and/or melon seeds or plants to Grower for the purpose of producing a single commercial crop for end use, Grower hereby agrees that Grower will only use such seeds or plants for plantings on Grower's 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. Any such transfer would be a material breach of this Agreement and Sellers would have the right to cease any or all sales of watermelon seeds or plants or any other seeds or plants to Grower immediately upon written notice to Grower.

3. Grower's Indemnification Agreement.

Grower acknowledges that in the event that Grower breaches the terms and conditions of Section 2 of these Additional Terms, with respect to the distribution of any such watermelon or melon seeds or plants to a third party, Sellers could incur liability to such third parties.

Therefore, Grower hereby unconditionally agrees to defend, indemnify, and hold harmless Sellers, from any loss, liability, or damage which Sellers, may incur, including, but not limited to, reasonable attorneys' 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. All Other Terms of the Nunhems Label Apply.

Except as expressly provided within these Additional Terms and Nunhems' General Terms and Conditions of Sale, all remaining terms, disclaimers, limitations and conditions of purchase as disclosed and set forth on the Nunhems product label and in the Nunhems' General Terms and Conditions of Sale regarding limited liability and limited license shall apply to all Grower's purchases or acceptances of Nunhems' watermelon or melon seeds and plants.

Grower's signature on the front page of the Agreement on Additional Terms and Conditions of Sale - Watermelon and Melon Seeds and Plants is evidence that Grower has read these Additional Terms and that Grower agrees to be bound by them.

Please return to Stokes Seeds Inc:
Mail: 13031 Reflections Dr, Holland, MI
49424
Fax: 877-994-0333
Email: customerservice.us@stokeseeds.com