

ABBOTT & COBB ("A&C" OR "SELLER") – TERMS AND CONDITIONS OF SALE (DOMESTIC USE)

NOTICE: ARBITRATION/CONCILIATION/MEDIATION OF SEED CLAIMS 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 based upon the failure of seed to which this notice is attached to produce as represented. Purchaser bears sole responsibility for compliance with such arbitration, mediation or conciliation requirements. A copy of any documentation in connection therewith shall be sent by certified or registered mail or as otherwise provided by state law to A&C, c/o Syngenta Seeds, LLC, 410 Swing Road, Greensboro, NC 27409, Attn: Legal Counsel, Vegetable Seeds. For specific information about requirements for seed claims, including filing procedures, time limitations and fees, contact the Department of Agriculture in the applicable state.

NOTICE: VOLUNTARY SEED CLAIM PROCEDURE IN SEVERAL STATES

Under the seed laws of several states, persons who believe that they have suffered damage from the failure of agriculture or vegetable seeds to perform as labeled or warranted, or as a result of negligence, have the opportunity to have the matter investigated and heard before a special seed board, arbitration committee, or council as an alternative to filing a court action. Purchaser bears sole responsibility for compliance with such arbitration, mediation or conciliation requirements. A copy of any documentation in connection therewith shall be sent by certified or registered mail or as otherwise provided by state law to A&C, c/o Syngenta Seeds, LLC, 410 Swing Road, Greensboro, NC 27409, Attn: Legal Counsel, Vegetable Seeds. For specific information about seed claims, including filing procedures, time limitations and fees, contact the Department of Agriculture in the applicable state.

TERMS AND CONDITIONS OF SALE

- 1) A&C grants to purchaser a limited, nonexclusive, non-transferable license to use or sell the seed purchased hereunder (i) solely for use in the production of a single, commercial crop which may be sold only as fresh or processed product, or (ii) for use in the production of transplants which may be resold solely for use in the production of a single, commercial fresh or processed product. Purchaser and its customers shall not reproduce or transfer said material, nor subject it to any conventional breeding, biotechnological process or genetic manipulation, such as tissue culture, genetic fingerprinting or any transformational techniques.
- 2) Either the purchaser's signature appearing (on the mail order form) (on the purchase order form) or acceptance of seeds, bulbs or plants upon delivery shall constitute acceptance of these terms and conditions.
- 3) These terms and conditions shall represent the entire agreement between the purchaser and the Seller.
- 4) All rated accounts are due net in 30 days. A cash discount as determined by A&C in its sole discretion may be offered for payment received at least 30 days prior to shipment of the order.
- 5) All prices subject to change without prior notice.
- 6) All overdue accounts are subject to an interest charge of 1½% per month (18% annual rate) or the maximum permitted by law.
- 7) Appropriate collection fees and/or legal expenses, including costs of any lawsuit, will be charged to any overdue account to the extent permitted by law.
- 8) Minimum Order \$1,000.00.
- 9) All sales are final. No returns will be accepted for credit without prior written authority from Seller. All returns are subject to a 25% restocking charge.
- 10) We reserve the right to choose the best means of conveyance where necessary. Rush shipments are subject to additional freight and handling charges.
- 11) **THE UNIFORM COMMERCIAL CODE, AS ADOPTED IN DELAWARE, SHALL GOVERN ALL MATTERS ARISING FROM THE SALE HEREUNDER.**
- 12) **ANY DISPUTE NOT SUBJECT TO OR RESOLVED IN ARBITRATION ARISING FROM THE SALE HEREUNDER SHALL BE BROUGHT AND LITIGATED IN A COURT LOCATED IN STATE OF DELAWARE, TO THE EXCLUSION OF THE COURTS OF ANY OTHER STATE OR COUNTRY.**

IMPORTANT NOTICE: SEED-BORNE DISEASES

A&C has undertaken, where applicable, reasonable precautions to identify and control seed borne pathogens on seed. Regardless of careful production, field roguing, special treatments or lot testing techniques, any variety may still contain infected seeds or be subject to genetic weaknesses that encourage seed borne infections or other diseases beyond the control of Abbott & Cobb. This could lead to loss of plants or produce grown from seed of this variety. At present, there is no known treatment that will eliminate all internally or externally borne pathogens from every single seed, nor can seed pathology tests detect with 100% accuracy, all pathogens within a seed lot. It is widely understood that precisely the same seed-borne pathogens and other pathogens, may be ever present in some soils, attacking otherwise healthy plants. Factors such as improperly sterilized tools, implements, trimming of transplants, the use of previously used plant trays, or close proximity of host plants or volunteers which naturally occur in Buyer's or User's greenhouses, fields or neighboring fields, may be the primary sources of disease. Also, some seed treatments show limited control of seed-borne diseases, but they cannot insure complete immunity. Do not plant seed under any circumstances if you do not understand or accept these facts.

LIMITATION OF WARRANTY

A&C 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, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE OF ANY FIDUCIARY OBLIGATION, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. No other representations are made other than for identification purposes. Seller neither assumes, makes, nor authorizes any person to make other representations or warranty on its behalf, or to assume for it any liability in connection with the sale or use of the items sold hereunder. 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. THIS WARRANTY IS VOID IF THE PRODUCT IS TREATED OR REPACKAGED BY ANY PARTY OTHER THAN SELLER. TO THE EXTENT PERMITTED BY STATE, FEDERAL AND OTHER APPLICABLE SEED LAWS, ALL SEED PRODUCTS SOLD BY SELLER ARE SOLD "AS IS."

LIMITATION OF REMEDY

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 ANY OTHER THEORY OF LIABILITY WHATSOEVER, FOR AN 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. 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 condition 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 right of recovery, and purchaser shall be deemed to have accepted the items sold and to have released Seller from liability. ALL CLAIMS MUST BE ASSERTED WITHIN ONE YEAR FROM THE DATE THE PRODUCT WAS DELIVERED OR THE CLAIM IS BARRED. THE EXCLUSIVE REMEDY AND SELLER'S SOLE LIABILITY FOR ANY CLAIM OR LOSS, INCLUDING, WITHOUT LIMITATION, CLAIMS RESULTING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, FIDUCIARY OBLIGATION, STRICT LIABILITY OR NEGLIGENCE SHALL BE LIMITED TO REPAYMENT OF THE PRODUCT PURCHASE PRICE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.