

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

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) Payment is due net 30 days.
- 3) All prices quoted or set forth in any written or electronic communication received from A&C is or are the final price(s).
- 4) All overdue accounts will be subject to an interest charge of 1.5% per month (18% annual rate) or the maximum amount that is permitted by law.
- 5) Any collection fees and/or legal expenses, including costs of any lawsuit, will be charged to any overdue account to the extent permitted by law.
- 6) All sales are final. No returns will be accepted for credit without prior written authority from A&C. All returns are subject to a 25% restocking charge.
- 7) All sales are "subject to crop". A&C shall have no responsibility to deliver seed nor any liability for damages in the event of a short crop or crop failure.
- 8) A&C reserves the right to choose the best means of conveyance where necessary. Rush shipments will be subject to additional freight and handling charges. All shipments are EXW shipping point. Any shipping charges advanced by A&C shall be added to the invoice price.
- 9) Title shall pass at shipping point. Purchaser shall be responsible for obtaining insurance to cover the seed and for all risk of loss during transit.
- 10) All shipments shall be made in the United States. Purchaser bears solely responsibility for the export and import of all such seed and compliance with all laws, regulations, and ordinances of each jurisdiction in which the seed is purchased and sold by Purchaser. A&C expressly disclaims any and all responsibility and liability for compliance with any and all such laws, regulations, and ordinances.
- 11) A&C shall have no obligation to provide replacement seed nor shall A&C be liable for any damages in the event the seed ordered or any segregable portion thereof is not admitted to the place of delivery.
- 12) Any storage, warehousing or transportation costs incurred while awaiting import clearance shall be the responsibility of Purchaser. Any and/or all costs associated with the importation of seed, including but not limited to, documents, testing, certification and fees of any kind are the responsibility of the Purchaser.
- 13) All seed shall meet A&C's standard specifications for each kind of seed unless otherwise specified in written or electronic communications between the parties evidencing that a different specification has been agreed.

LIMITATION OF WARRANTY

A&C, to the extent required by law, warrants that the seeds, bulbs or plants sold are as described on the Sales Order, container label or 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. A&C 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 seed, bulbs or plants sold hereunder by purchaser, A&C DOES NOT ADOPT OR ASSUME ANY WARRANTIES EXPRESS OR IMPLIED GIVEN BY PURCHASER. Purchaser further agrees to defend, indemnify and hold harmless A&C against claims, actions, proceedings or other liabilities of any nature whatever, including strict liability or negligence of A&C. 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 A&C BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY, WHETHER BASED ON CONTRACT, ON THE COMMERCIAL CODE, ON NEGLIGENCE, OR ANY OTHER THEORY OF LIABILITY WHATSOEVER, FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE SEED, BULBS OR PLANTS 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. Purchaser shall be responsible for inspecting the seed, bulbs or plants sold hereunder within a reasonable time following receipt of shipment. No liability hereunder or otherwise shall be asserted against A&C unless the purchaser or user reports any condition that might lead to a complaint promptly to A&C following discovery of such conditions, but in no event to exceed 30 days after receipt of delivery. Failure to inspect or promptly notify A&C 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 A&C 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.

IMPORTANT NOTICE: SEED-BORNE DISEASES

A&C has undertaken reasonable precautions to identify and control seed borne pathogens on seed. Even with careful production, field roguing, special treatments, or lot testing techniques, however, any given seed lot of any variety may still contain undetected infected seeds or be subject to genetic weaknesses that encourage seed borne infections or other diseases beyond the control of A&C. This could lead to loss of plants or produce grown from seed of this variety. At the present time, 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 at all times be present in some soils, available to attack 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 a Purchaser's or User's greenhouses, fields, or neighboring fields, may be the primary sources of disease. Some seed treatments show limited control of seed borne diseases, but they cannot insure complete immunity.

CERTIFICATION OF CONVENTIONAL PLANT BREEDING TECHNIQUES

A&C certifies that the seeds, bulbs, or plants sold hereunder were bred, developed and produced using conventional plant breeding and seed growing techniques. No recombinant DNA methods or other engineering techniques using foreign source DNA were used in the development of this seed. Purchaser accepts the seed ordered based on this certification. Purchaser agrees to conduct any tests of its own to determine whether any GMO's are present within 30 days of receipt of the seed. Seller shall designate a referee laboratory in the event there are conflicting findings and a dispute arises. No credit and/or refund will be given to Purchaser based on any subsequent test result, finding, or claim of the presence of GMOs.