

HARRIS MORAN SEED COMPANY

NOTICE, AGREEMENT AND TERMS AND CONDITIONS OF SALE OR TRANSFER
Relating to BACTERIAL FRUIT BLOTCH and GUMMY STEM BLIGHT
ON WATERMELON SEED
Before June 30, 2011

NOTICE: Please read this entire Notice, Agreement and Terms and Conditions of Sale or Transfer (“Agreement”) before signing. It is a binding agreement for transactions in Harris Moran Watermelon Seed (“Watermelon Seed”) during the period beginning from your signature below until June 30, 2011 (“Sale Period”). If the terms are not acceptable, do not sign this Agreement. If you do not understand any term of this Agreement, consult an attorney.

Harris Moran believes that Commercial Growers, Transplant Growers and Buyers of Watermelon Seed have significant responsibility for reducing risk, loss and damage caused by certain diseases, transmission of which might be via the seed. Accordingly, Harris Moran provides this Agreement so that Buyers, Growers, Users and Sellers understand (i) Harris Moran’s position (ii) the Terms and Conditions of Sale and Transfer for Watermelon Seed and (iii) their respective responsibilities and rights.

CHECK BOX THAT APPLIES TO THIS SALE OR TRANSFER

Sale of Seed

_____ (“Buyer”) agrees to purchase and Harris Moran Seed Company (“Harris Moran”) and its dealers (Harris Moran and its dealers are collectively the “Sellers”) agree to sell Harris Moran Brand watermelon seed (“Watermelon Seed”) during the Sale Period under the terms and conditions set forth in this Agreement.

Transfer of Seed to Transplant Grower

_____ (“Seed Owner”) agrees to obtain from _____ (“Transplant Grower”) and Transplant Grower agrees to provide seedlings grown from Watermelon Seed (such seedlings shall also be termed “Watermelon Seed”) during the Sale Period under the terms and conditions set forth in this Agreement.

1. LIMITATIONS ON AND REQUIRMENTS FOR RE-SALE OR TRANSFER

1.1 Buyer’s Duty to Notify of Terms and Conditions of Sale Prior to Authorized Sale or Transfer

PRIOR to any Sale or Transfer of Watermelon Seed, Buyer will obtain a signed copy of this Agreement from the purchaser or transferee. Agreement forms are available from a Customer Service Representative, at Harris Moran Seed Company, P. O. Box 4938, Modesto, CA 95352, (209) 549-5243 or at <http://www.harrismoran.com/products/watermelon/pdf/wmelonpurchase.pdf>.

1.2 **Prohibited Sales:** Sales or transfers to any person who has not signed a current copy of this Agreement are prohibited (“**Prohibited Sales**”).

BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLERS HARMLESS FROM ANY AND ALL CLAIMS ARISING FROM PROHIBITED SALES OF WATERMELON SEED, WHETHER THE LEGAL THEORY FORMING THE BASIS OF SUCH CLAIM INVOLVES AGREEMENT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

1.3 **Authorized Sales or Transfers:** Sales and transfers are authorized (“**Authorized Sales**”) only to a Buyer who has signed a copy of this Agreement for the current Sales Period.

2. HARRIS MORAN LIMITATION OF WARRANTY AND LIABILITY

2.1 THE TERMS AND CONDITIONS OF THE HARRIS MORAN LIMITATION OF WARRANTY AND LIABILITY (ATTACHED HERETO) APPLY TO ALL SALES OF WATERMELON SEED, AND THOSE TERMS ARE INCORPORATED INTO THIS DOCUMENT IN FULL, EXCEPT AS HERE EXPRESSLY MODIFIED.

2.2 BACTERIAL FRUIT BLOTCH NOTICE

Bacterial Fruit Blotch of Watermelon (BFB), caused by *Acidovorax avenae subsp. citrulli*, is a serious disease, which has been and continues to be a significant risk in many areas of watermelon cultivation.

In many, if not most or all of such cases, the cause(s) of the BFB infection and subsequent loss is difficult to prove or identify with assurance, as causes may include:

- existence of the BFB on seed as it came from the seed company,
- infection arising from BFB contamination or transfer in the transplant house,
- infection from the environment such as from prior years' watermelon or melon crop or from wild cucurbits, or
- transfer from neighboring fields through equipment, insects, bird or animals.

Spread of BFB in a field, and the extent of damage, is affected by many factors, including weather and the grower's agronomic practices (including use or not of preventive practices).

Watermelon Seed from Harris Moran may carry the pathogen which causes BFB. While it is impossible to conduct any testing procedures to give results with 100% certainty with regard to the presence of any seed borne BFB infection, Harris Moran is using the following efforts to test all of its watermelon seed lots, as follows:

- Harris Moran Seed Company will test for the presence of the BFB pathogen on 50,000 seeds randomly sampled from each production mother lot of hybrid and triploid seed and 30,000 seeds randomly sampled from each production mother lot of open-pollinated seed.
- Only seed of production mother lots tested and found to be "negative" or with "no evidence" of BFB present, within the known limits of detection, will be sold.

2.3 GUMMY STEM BLIGHT NOTICE

Gummy Stem Blight (GSB) has been and continues to be a significant risk in many areas of watermelon production. GSB is caused by a fungus, *Didymella bryoniae* that attacks watermelons and other cucurbits. Yield loss due to GSB occurs as a result of rapid defoliation of vines and fruit infection and subsequent decay. The factors responsible for the introduction and spread of the pathogen causing GSB are similar to BFB. Although it is impossible to conduct any testing procedures to give 100% reliable results with regard to the identification of any seed borne GSB infection, Harris Moran is using the following efforts to test all of its watermelon seed lots:

- Harris Moran Seed Company will use the standard "blotter" test for the presence of the GSB pathogen as conducted by Harris Moran on 1,000 seed per production mother lot from a random sample.
- Only seed of production mother lots tested and found to be "negative" or with "no evidence" of the GSB pathogen present within the known limits of detection will be sold.

2.4 ASSUMPTION OF RISKS

Buyer acknowledges that it has been informed of the risk of nonperformance and the risks associated with the potential presence of BFB and GSB. Buyer also releases Sellers from any and all claims relating to BFB and GSB with respect to all Watermelon Seed. Furthermore, Buyer expressly acknowledges that its exclusive and sole remedy against Sellers for any loss

resulting from the use or sale of the seed is governed by the Harris Moran Limitation of Warranty and Liability.

3. SALE OR USE IN MEXICO

In addition to the terms and conditions set forth above, if Watermelon Seed are sold or used in Mexico, Harris Moran certifies that Harris Moran has complied with the requirements of Articles 8, 9 and 10 of Mexico's Law Governing the Production, Certification and Sale of Seeds and Articles 13, 20 and 21 of the Regulations implementing such law.

The undersigned acknowledges that he/she has read and understands each of the terms of this Agreement; that he/she understands that Harris Moran Seed Company has recommended that Buyer consult with an attorney to answer any questions Buyer may have regarding this Agreement; and that he/she has authority to execute this Agreement on behalf of Buyer.

BUYER OR TRANSPLANT GROWER:

SELLER/SEED OWNER:

(Print Company Name)

(Print Company Name)

Customer #: _____

(Print Name)

(Print Name)

By: _____
(Signature)

By: _____
(Signature)

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

City: _____

State: _____ Zip: _____

Phone: _____

**Limitation of Warranty and Liability
and Use Restriction
READ THIS BEFORE ORDERING OR USING**

Harris Moran Seed Company (HM) warrants that a representative sample of the seed and associated products in this container (collectively the "Seed") was tested and labeled at the time of initial packaging (or thereafter as indicated) by HM, and, at the time of such testing, conformed to the label or tab description within recognized tolerances.

Disclaimer of Warranties: HM makes NO other warranty of any kind. *THIS EXPRESS WARRANTY EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION HEREON.* Harris Moran makes NO warranty this Seed is free of seed-borne diseases or free of genetically modified organisms. As permitted by law, Seed is sold "As Is".

Acceptance of Terms: Any person who buys, receives, opens or uses this Seed (collectively the "User") thereby accepts and agrees to this Limitation of Warranty and Liability and Use Restriction ("Agreement") between User and HM. If User did not purchase this Seed directly from HM, User agrees that HM is a third-party beneficiary and is entitled to enforce this Agreement as if it had been entered into between User and HM. User agrees to accept full responsibility for the performance of the Seed and crop. **IF USER DOES NOT ACCEPT THESE TERMS, USER MUST RETURN THIS SEED IN THE UNOPENED CONTAINERS TO THE PLACE OF PURCHASE FOR A FULL REFUND WITHIN 30 DAYS OF RECEIPT.**

Exclusive Remedy. User's Exclusive Remedy and HM's sole liability for any loss resulting from the ordering or use of the Seed is limited to a refund of the price paid for the Seed and will not include incidental, consequential, or exemplary damages, such as loss of yield or lost profits. User agrees that HM's refund of the price paid for the Seed will not cause this Agreement to fail of its essential purpose.

Immediate Notice. Buyer must give HM immediate notice (no later than 7 days) when Buyer believes a Breach of Warranty exists, and Buyer shall fully cooperate with HM investigation.

Product Data Limitations. Product data and ratings are based on averages of results from various test locations. They are a summary of past results and **not** a prediction of future performance. Your performance will vary depending on the actual environment, pathogen strain and management conditions in your field. Any technical advice is provided for your consideration only.

Third Party Handling. HM takes no responsibility and makes no warranty for Third-Party Handling including treatment, pelleting, priming, grading, packaging or any processing done to the Seed by anyone other than HM.

Notice of Required Arbitration/Conciliation/Mediation Required By Many States within United States: Under seed laws of many states, arbitration, conciliation or mediation 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. The User must file a complaint (sworn for AL, AR, CO, FL, IL, IN, MN, MS, NC, SC, TX, WA; signed only CA, GA, ID, ND, SD) along with the required filing fee (where applicable) with the Commissioner/Director/Secretary of Agriculture, Seed Commissioner, or Chief Agricultural Officer of the State within such time as 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 must be sent to HM by certified or registered mail or as otherwise provided by statute.

Binding Arbitration and Venue: In lieu of any action in civil court, HM and User agree to submit any claim or dispute based on the ordering or using of Seed to binding arbitration in Stanislaus County, California under the rules of the American Arbitration Association. In the event a court of law determines any claim or dispute is not subject to binding arbitration, then Stanislaus County, California shall be the venue of any civil action and California law shall apply and any civil action shall be non-jury.

Severability: If any term of this Agreement is held to be unenforceable, all remaining terms will remain in effect and be fully enforceable.

Use Restriction: This Seed is owned by or licensed to HM. HM strictly limits the sale and possession of this Seed to a grant to User of a non-exclusive right to use this Seed for the sole purpose of growing a single crop of plant parts for sale or use as a vegetable product. User shall not export, reproduce, multiply or breed the Seed, and shall not genetically analyze or manipulate in any way the Seed, or any plants or plant parts produced from the Seed. User shall include this Agreement with any transfer of this Seed.

This Agreement is the **Entire Agreement** between HM and User regarding Warranties, Liabilities and Limitations on Warranties and Liabilities. **User has not relied upon any warranty, representation or use restriction except as specifically provided in this Agreement.** Rev. 3/14/10