

Seed Invoice Terms And Conditions

Limited Warranty And Exclusive Remedy

Buyer agrees to all of the following terms and conditions and acknowledges that the limitations and disclaimers herein constitute the entire agreement between Seller and Buyer regarding warranties or other representations and the sole remedy for any breach thereof. Buyer shall be conclusively deemed to have accepted the seed on the terms set forth herein, unless the seed is returned undamaged and in original containers to Seller within 7 days of pick-up of the seed by, or delivery of the seed to, Buyer, including its employees or agents. Upon acceptance, all sales are final and not subject to cancellation by Buyer. The Buyer shall not be entitled to any set off or to deduct from the invoice price the amount of any claim asserted by Buyer.

Seller warrants that the seed sold to Buyer was obtained from a specific lot of seed from which samples previously were selected and tested in accordance with procedures established by state and federal seed laws, and that the results of such tests met or exceeded the information on the label attached to the seed containers. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SEED, AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, USAGE OF TRADE, OR FITNESS FOR A PARTICULAR PURPOSE. No employee, agent, or dealer is authorized by Seller to make any additional warranty. Other than as expressly provided herein, Buyer agrees that no statements, representations, or advertisements of Seller were an inducement to Buyer in connection with Buyer's acquisition, purchase or use of the seed.

SELLER SHALL NOT BE LIABLE FOR ANY CLAIM REGARDING THE SEED UNLESS SUCH CLAIM IS MADE AS SOON AS PRACTICABLE (NOT TO EXCEED 90 DAYS) FROM THE TIME THE BUYER DISCOVERED, OR THROUGH THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE DISCOVERED, THE FACTS GIVING RISE TO THE CLAIM. Any claim by Buyer based on or arising out of the purchase or use of the seed shall be barred unless Buyer commences arbitration or suit on or before two years following the earliest date of tender or delivery of the seed to Buyer (or the shortest period permitted by applicable law). To the extent arbitration is not required by state law prior to the filing of a civil suit, any such suit must be brought in a state or federal court in the district and division in which Seller sold the seed. AS PERMITTED BY APPLICABLE LAW, SELLER AND BUYER WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BEFORE A JURY IN CONNECTION WITH ANY CLAIMS HEREUNDER. SELLER'S LIABILITY FOR ANY CLAIM RELATED TO THE SALE OF THE SEED, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM RELATING TO WARRANTIES OR REPRESENTATIONS MADE IN CONNECTION WITH THE SALE OF SUCH SEED, IS EXCLUSIVELY LIMITED, AT SELLER'S OPTION, TO EITHER THE REPLACEMENT OF THE SEED OR A REFUND OF THE PURCHASE PRICE OF THE SEED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS RESULTING FROM THE PURCHASE AND USE OF THE SEED, INCLUDING, BUT NOT LIMITED TO, CROP LOSS.

Because Seller has no control over the seed after delivery to Buyer, Seller accepts no responsibility for changes in the qualities of the seed after delivery. Also, the emergence, yield and other characteristics of the crop to be grown from the seed depend on numerous conditions and factors beyond the control of the Seller, including, but not limited to, circumstances based on weather, planting depths, soil conditions, fertilizer and chemical applications, and rainfall or water applications. Therefore, Seller cannot accept any responsibility for the emergence, yield, resistance to disease or insects, or other qualities of the crop to be grown from the seed.

In the event arbitration, suit, or other legal action is pursued in connection with this seed sale, the prevailing party shall be entitled to recovery of its reasonable attorney's fees and its court costs in such action, unless prohibited by law.

ANY DISPUTE OR CLAIM ARISING BETWEEN BUYER AND SELLER SHALL BE GOVERNED BY AND SUBJECT TO THE LAWS OF THE STATE IN WHICH SELLER SOLD THE SEED, INCLUDING, BUT NOT LIMITED TO, THE UNIFORM COMMERCIAL CODE OF SUCH STATE OF SELLER ("STATE LAW"). IF ANY CONFLICT EXISTS BETWEEN THE STATE LAW AND ANY OF THE TERMS AND CONDITIONS CONTAINED HEREIN, THE TERMS AND CONDITIONS CONTAINED HEREIN SHALL PREVAIL.

Buyer agrees to follow, and strictly adhere to, all the warnings and requirements set forth on the seed bags in which the seed is sold to Buyer.

As used hereon, the term "Seller" means Birdsong Corporation and any of Birdsong Corporation's subsidiaries, employees, agents or representatives. The term "Buyer" means any person, corporation, partnership, or other entity who acquires, purchases or uses the seed sold by Seller.

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