

# Harris Moran 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

Buyer's or Transplant Grower's Initials: \_\_\_\_\_

Page 1 of 2

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

# NOTICE, WAIVER AND INDEMNIFICATION REGARDING BACTERIAL FRUIT BLOTCH AND GUMMY STEM BLIGHT ON HM.CLAUSE, INC. WATERMELON SEED

## 1. BACTERIAL FRUIT BLOTCH NOTICE

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

## 2. GUMMY STEM BLIGHT NOTICE

Gummy Stem Blight (GSB) caused by a fungus, *Didymella bryoniae* is a serious disease which continues to be a significant risk in many areas of watermelon cultivation.

3. Watermelon Seed may carry the pathogens which cause BFB and GSB. 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 or GSB infection, industry accepted representative samples of all HM.Clause, Inc. watermelon seed lots are tested for the pathogens. Only seed of production mother lots tested and found "negative" or with "no evidence" of the BFB and GSB pathogens, within the known limits of detection, is sold.

4. PRIOR to any Sale or Transfer of Watermelon Seed, Buyer will obtain a signed copy of the NOTICE, WAIVER AND INDEMNIFICATION REGARDING BACTERIAL FRUIT BLOTCH AND GUMMY STEM BLIGHT ON HM.CLAUSE, INC. WATERMELON SEED (the "BFB Waiver") from the purchaser or transferee. Sales or transfers to any person who has not signed a current copy of this document are prohibited ("Prohibited Sales").

## 5. INDEMNIFICATION

BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER and HM.CLAUSE, INC. HARMLESS FROM ANY AND ALL BFB and/or GSB CLAIMS ARISING FROM THE SALE, TRANSFER OR CULTIVATION OF HM.CLAUSE, INC. WATERMELON SEED, WHETHER THE LEGAL THEORY FORMING THE BASIS OF SUCH CLAIM INVOLVES AGREEMENT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

## 6. ACKNOWLEDGEMENT AND WAIVER

BUYER acknowledges that it has been informed of the risks associated with the potential presence of BFB and GSB in watermelon seed. BUYER knowingly and voluntarily releases SELLER and HM.Clause, Inc. and waives any and all claims relating to BFB and GSB with respect to all HM.Clause, Inc. Watermelon Seed.

7. THIS NOTICE, WAIVER AND INDEMNIFICATION REGARDING BACTERIAL FRUIT BLOTCH AND GUMMY STEM BLIGHT ON HM.CLAUSE, INC. WATERMELON SEED WILL REMAIN IN PLACE FROM THE EFFECTIVE DATE BELOW FOR AN UNDETERMINED AMOUNT OF TIME UNTIL FURTHER NOTICE BY HM.CLAUSE, INC.

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_

Rev. 5/15/14

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