

## GENERAL TERMS AND CONDITIONS OF SALE

- **These General Terms and Conditions of Sale (“Terms”)** prepared by Nunhems USA, Inc. (“BASF | Nunhems”), with offices at 1200 Anderson Corner Road, Parma, Idaho 83660, are effective from 1<sup>st</sup> September 2023 (“Effective Date”) and replace all previously published versions by BASF | Nunhems.
- **These Terms include important terms and conditions that will apply to all Offers, Orders, sales, transfers, and all Other Agreements. The application of any terms and conditions of Buyer are expressly rejected.**
- **These Terms include a binding arbitration requirement and a waiver of jury trial.**
- **Product offered by BASF | Nunhems is intended for shipment to U.S. and Canada only. Export or re-export of Product must be in accordance with U.S. Export Administration Regulations. Diversion contrary to U.S. law is prohibited.**
- **All Product sold or provided pursuant to these Terms may be subject to certification of PVP or to a claim of Breeder’s Rights. Use of the Product or Derivatives for the purpose of harvesting seed is strictly prohibited. The sale or transfer of Product does not give Buyer a license to multiply Product under any of BASF | Nunhems’ PVPs or Breeder’s Rights.**
- **Failure of Buyer to submit a written objection to these Terms or the terms of the Agreement to Sales Representative or Customer Service (a) within three (3) Business Days of receipt of Order Acknowledgment; or (b) prior to commencement of Services, if applicable; or (c) shipment of the Product, whichever occurs first, will be deemed Buyer’s Acceptance of these Terms and the terms of the Agreement.**
- **Therefore, Buyer should carefully read these provisions before accepting these Terms.**

### Definitions and Interpretations

**Agreement:** means the agreement by and between the Parties for the sale, transfer, and/or delivery of the Product and/or the performance of Services, if any, which consists of these Terms and the applicable (a) Price List; (b) Order Acknowledgment; (c) Container Label; and (d) invoice, in addition to any Other Agreement or writing executed in accordance with these Terms. If an Order includes the purchase of watermelon or melon seeds or plants, BASF | Nunhems’ Watermelon/Melon Agreement will also form an integral part of the Agreement. Any terms or conditions of Buyer are expressly rejected by BASF | Nunhems and will have no force or effect unless and until accepted by BASF | Nunhems in writing that specifically states an intention to deviate from the terms and conditions of the Agreement.

**Accept, Accepted, and Acceptance:** mean Buyer’s acceptance of the Order, these Terms, and the Agreement.

**Affiliate:** means any legal entity affiliated with Buyer or BASF | Nunhems (e.g., a parent, sister, or daughter company).

**Applicable Law or Law:** means all applicable local, state, provincial, and federal laws, orders, rules, regulations, and ordinances.

**Article:** means an article of these Terms.

**Brands:** means, whether registered or not and world-wide, all the trademarks, logos, domain names, trade names, designations, variety names, company names, symbols, trade packaging, and

similar means of expression BASF | Nunhems uses on the packaging of the Product or which is descriptive of Plant Parts and all communication, displays, and statements to distinguish itself and its Product, Services, and/or Plant Parts from third parties and which Brands are exclusive property of Nunhems or one of its relevant Affiliates .

**Breeder’s Rights:** has the definition given in Chapter 57, Title 7, United States Code.

**Business Day:** means a day that is not a Saturday, Sunday, or a public holiday recognized by Idaho banking institutions or, for deliveries of the Product, at the Destination of delivery. If Business Day is not explicitly mentioned, it should be understood as a natural or calendar day.

**Buyer:** means the person or entity who/which orders or uses Product and/or Services from BASF | Nunhems.

**Buyer Contractor:** means any third-party subcontractor or consultant of Buyer.

**Buyer Customer:** means any person or entity to whom Buyer transfers or sells any Product, Derivative, bulbs, or Plant Parts harvested from the Product.

**Claim:** means any civil, criminal, administrative, regulatory, arbitral, or investigative inquiry, action, suit, or proceeding and any and all direct or indirect, demands, claims, notices of violation, notices of probable violation, filings, investigations, administrative proceedings, actions, causes of action, suits, other legal proceedings, judgments, assessments, damages, deficiencies, taxes, penalties, fines, obligations, responsibilities, liabilities, payments, charges, losses, costs, and expenses of any kind or character, whether known or unknown, based on negligence, strict liability or otherwise, including penalties and interest on any amount payable as a result of any of the foregoing, any legal or other costs and expenses incurred in connection with investigating or defending any Claim, and all amounts paid in settlement of Claims.

**Complaint:** means any written (E-mail Notification is sufficient) complaint of Buyer, Buyer Contractor, or Buyer Customer related to a defect or deficiency in or to a Product, Service, Derivative, or crop reported to BASF | Nunhems pursuant to these Terms.

**Confidential Information:** all information provided by BASF | Nunhems to Buyer, either orally or in writing, which has been designated as confidential information or which should reasonably be regarded as confidential given the nature of the information and/or the circumstances in which the information has been provided.

**Consequential Damages:** means any indirect, special, consequential, exemplary, or punitive damages, including loss of revenue, loss of profit, loss of yield, loss of goodwill, and amounts expended in using a Product.

**Container Label:** means the terms and conditions set forth on the label of the package, container, or bag containing the Product.

**Credit Privileges:** means the credit privileges extended to Buyer, if any, as determined by BASF | Nunhems in its sole discretion, which may change from time-to-time without prior notice to Buyer.

**Custom Seed Treatment:** means customized seed treatment and other non-standard seed enhancement.

**Customer Service:** means BASF | Nunhems’ customer service function, which can be reached via:

- E-mail: [Nunhems.customerservice.us@basf.com](mailto:Nunhems.customerservice.us@basf.com)
- Mail: 1200 Anderson Corner Road, Parma, Idaho 83660
- Phone: (800) 733-9505 or (208) 674-4100

**Default:** means a Party’s failure to fulfil one or more of its obligations, including payment obligations, under the Agreement correctly or on time.

**Derivative:** means any transformation or derivative of the Product by Buyer, Buyer Contractor, or Buyer Customer.

**Destination:** means the shipping destination of the Product as specified in the Order or, in the event Services are being

performed for Buyer on the Product by a Third-Party Service Provider, the shipping destination of such Third-Party Service Provider.

**E-mail Notification:** means a notification required by the Agreement which may be sent via electronic mail to Customer Service (when BASF | Nunhems is the intended recipient) or to the electronic mail address for Buyer on file with BASF | Nunhems (when Buyer is the intended recipient). All such notifications shall have receipt thereof orally confirmed.

**Force Majeure:** means an unforeseen and reasonably unpreventable circumstance or act of God, including extreme weather conditions; natural disasters; acts, regulations or law of any government; wars, terrorism, or civil commotions; destruction of production or breeding facilities or materials; fire; flood; epidemics/pandemics; failure of public utilities or common carriers; strikes at companies other than at BASF | Nunhems' company; unofficial strikes or political strikes at BASF | Nunhems' company; a general or partial lack of the necessary raw materials and other goods or services required to render the agreed performance; unforeseeable delays at sub-suppliers or other third parties on which BASF | Nunhems is dependent; and general transport problems.

**GM:** means genetically modified or genetic modification, as the context requires.

**HR and High Resistance:** has the meaning given in Article 9 hereof.

**Immunity:** has the meaning given in Article 9 hereof.

**Indemnitees:** means a Party to these Terms and its respective Affiliates and its and their respective directors, officers, employees, agents, successors, and permitted assigns.

**Information:** means the educational, technical, or promotional information or other information provided in any form or media by BASF | Nunhems, including information, descriptions, recommendations, advice, and illustrations provided by or on BASF | Nunhems' behalf in catalogues, brochures, leaflets, data sheets, and other advertising material, on the packaging, on BASF | Nunhems' website, or in any other form of communication, including varieties, varietal characteristics or periods of maturity, cultivation advice, information about quality, resistance, composition, weight, dimensions, treatment in the broadest sense, applications, and characteristics of the Product **IP Rights and Intellectual Property Rights:** mean all current and future intellectual property rights, whether registered or not, including but not limited to, Breeder's Rights, plant variety rights, patents, copyrights, trade secrets, confidential know-how, and Brands throughout the world. IR and Intermediate Resistance: has the meaning given in Article 9 hereof.

**Mutant Materials:** means any (alleged) parental line, mutant, sport, or any off-type derived from Product and/or Plant Parts.

**Nunhems:** means Nunhems USA, Inc.

**Offer:** means any written offer or quote set forth in the Order Acknowledgment and/or pro forma invoice made by BASF - Nunhems relating to the sale or transfer of the Product or the performance of Services, based on which BASF | Nunhems shall sell or transfer the Product to Buyer or perform the Services on behalf of Buyer.

**Order:** means a purchase order or similar document for the order of Products and/or Services.

**Order Acknowledgment:** means BASF | Nunhems' Order acknowledgment or confirmation, made in writing or electronically, to which these Terms are referenced via a hyperlink, for the relevant Product and/or Service.

**Other Agreements:** mean any and all other agreements that have been executed and are currently in effect by and between the Parties which relate to the subject matter of the Agreement.

**Partially Fulfilled Order:** means BASF- Nunhems has partially fulfilled or will fulfil its Order obligations.

**Parties:** means, collectively, the parties to the Agreement.

**Party:** means an individual party to the Agreement.

**Plant Parts:** means all plants and plant parts produced and cultivated from Product.

**Price List:** means the then-current BASF | Nunhems' price and/or catalogue price for the applicable Product or Service.

**Product:** means all seeds (treated and untreated), bulbs, and Plant Parts, any other agreed upon goods which are subject of the Agreement.

**PVP:** means Plant Variety Protection.

**Resistance:** has the meaning given in Article 9 hereof.

**Sales Representative:** means the BASF | Nunhems' sales representative most closely associated with the Order.

**Sanctions Rules:** means applicable trade sanction laws, regulations, rules, and licenses, including those imposed by the United Nations, U.S., Canada, European Union, and any European Union's Member States.

**Services:** means the services to be performed, as set forth in the Order, by BASF | Nunhems or a Third-Party Service Provider.

**Specifications:** means Product or Service specifications or requirements.

**Susceptibility:** has the meaning given in Article 9 hereof.

**Terms:** has the meaning given in the preamble and shall include the preamble and any exhibits attached hereto and which may be amended from time to time by BASF | Nunhems. Deviations from these Terms require the explicit written approval of BASF | Nunhems.

**Third-Party Service Provider:** means a BASF | Nunhems' pre-approved third-party service provider.

**VAT:** the value added sales tax levied by the Dutch government.

**Watermelon/Melon Agreement:** means the Agreement on Additional General Terms and Conditions for Watermelon and Melon Seeds and Plants.

#### **Article 1. Applicability of these Terms**

1. These Terms apply to all Offers, Orders, and Other Agreements between BASF - Nunhems and Buyer, except as otherwise agreed to in writing by the Parties. The applicability of any terms and conditions of Buyer, including any terms and conditions printed on or referred to in Buyer's written communication to purchase or any Order, are expressly rejected, even if Buyer's terms and conditions may have been (partly or fully) applied to in previous transactions between Parties.
2. If there is a conflict or inconsistency between the items comprising the Agreement, the following order of precedence will apply in descending order of priority: (1) Other Agreements, if applicable; (2) Watermelon/Melon Agreement, if applicable; (3) Exhibits to these Terms, if applicable; (4) these Terms; (5) the Price List; (6) the Order Acknowledgment; (7) the Container Label; and (8) the invoice.

#### **Article 2. Offers, Acceptance, Quantities, and Orders**

1. Offers made by BASF | Nunhems are without commitment. Up to three (3) Business Days after Buyer's Acceptance of an Offer, BASF | Nunhems is entitled to modify or withdraw its Offer without liability or penalty. In the event that Product or Service availability make it commercially unreasonable or impracticable for BASF | Nunhems to perform its obligations under the Order (for reasons other than Force Majeure), Nunhems will have the right to modify the Order, Order Acknowledgment and/or pro forma invoice, as applicable, to reflect needed changes upon notice to Buyer.
2. Acceptance of an Offer shall occur upon (a) receipt of the Order Acknowledgment to which Buyer does not submit a written objection to the Sales Representative or Customer Service within three (3) Business Days of Buyer's receipt of such Order Acknowledgment; (b) commencement of Services; or (c) shipment of the Product, whichever occurs first.

3. Offers automatically expire, without notice to Buyer, if not Accepted by Buyer within thirty (30) days of the Offer being made to Buyer.
4. If an Offer is withdrawn or expires pursuant to this Article 2, there is no agreement between the Parties regarding such Offer. Once an Offer is Accepted by Buyer, it may not be cancelled by Buyer except with the written consent of BASF | Nunhems (e.g., consent granted via modified Order Acknowledgment or pro forma invoice), which may be withheld for any reason.
5. If Buyer cancels the Order after invoice and BASF | Nunhems provides its written consent to the cancellation, BASF | Nunhems reserves the right to charge Buyer up to twenty percent (20%) of the invoice price on the cancelled Product as a restocking charge to compensate BASF | Nunhems for its costs incurred in placing and cancelling the Order, including any packaging, handling, and restocking costs. This payment of the restocking charge will be without prejudice to BASF | Nunhems' right to receive compensation in full for the cancellation and will be processed as a debit against the returned Product credit as a separate line item. Buyer will return any delivered cancelled Product UNOPENED, within ten (10) days of receipt to BASF | Nunhems or to the BASF | Nunhems' authorized distributor from whom the cancelled Product was purchased along with any return authorization documentation required by BASF | Nunhems and BASF | Nunhems will refund the purchase price, if any, for the returned Product if received in compliance with the terms of this Article 2.
6. Failure to provide timely notice to the Sales Representative or Customer Service or failure to return the Product and return authorization documentation within the time period stated above may negatively affect Buyer's refund, if applicable.
7. BASF | Nunhems has the right to immediately stop and cancel shipments of Product and/or the performance of Services upon notice to Buyer if Buyer does not comply with the terms and conditions of the Agreement, as determined by BASF | Nunhems in its sole and reasonable judgment.
8. All Orders must be placed in the manner and form always required by BASF | Nunhems.
9. All references to Specifications in the Agreement correspond to the most applicable Specifications, as periodically published in writing (including electronically) by BASF | Nunhems.
10. Except as otherwise stated in these Terms, adjustments of any confirmed quantities required the written agreement (e-mail is sufficient for this purpose) of the Parties.
11. BASF | Nunhems may in its sole discretion determine a "specified Order quantity", being the minimum Order quantity for each order of Product to be supplied to Buyer.
12. If the quantity requested in any Order differs from the standard quantity applied by BASF | Nunhems or a multiple thereof, BASF | Nunhems is free to deliver the nearest higher quantity without notice to Buyer.
13. Buyer acknowledges and agrees that BASF | Nunhems' obligation to deliver Product is also fulfilled by delivery with a minor difference in size, packaging, number, and weight.
14. BASF | Nunhems reserves the right to refuse any Order placed directly with BASF | Nunhems of value less than \$500.00.
15. An Offer made to the Buyer or an agreement between BASF | Nunhems and the Buyer does not imply and may not be interpreted by any means as an implied license to the Buyer with regard to any Intellectual Property Rights in or to the Product offered, transferred, or sold.
16. No rights or obligations will arise between the Parties until the Order Acknowledgment has been sent or an Other Agreement has been signed by the Parties.
17. All Orders are subject to the availability of Product and/or Services. In the event of an issue arising outside of BASF | Nunhems' reasonable control, including a Force Majeure, which negatively affects the quantity, quality, or processing of Product or the performance of Services, BASF | Nunhems will not be obligated to fulfil the Order, but will, at its option (a) use commercially reasonable efforts to supply Buyer with some amount of Product; (b) supply Buyer with a substantially equivalent substitution of Product or Service; or (c) refund to Buyer the monies paid for the portion of Product and/or Service that was not delivered or performed.
18. Buyer agrees that Buyer's exclusive remedies for any failure of BASF | Nunhems to supply Product and/or Services pursuant to this Article 2 are the remedies stated in this Article 2.16 and that Buyer is not entitled to damages pursuant to any theory of Law, contract, or equity.

**Article 3. Price and Payment**

1. The price for which the Product and/or Services will be sold or provided to Buyer are specified in the Price List.
2. Unless the Agreement or Other Agreement states otherwise, BASF | Nunhems reserves the right to change its prices periodically from time-to-time, without prior notice to Buyer. Each new Price List will invalidate the preceding one regarding all Orders placed after the issuance or publication of the new Price List. BASF | Nunhems is not obligated to honor prices due to misprints or inadvertent errors.
3. The prices specified in the Price List are exclusive of VAT, or equivalent tax duty, unless otherwise specified.
4. In addition to the Price List, Buyer shall pay BASF | Nunhems the amount of all taxes, excises, duties, or other charges (except taxes on or measured by net income) that BASF | Nunhems may be required to pay to any government with respect to the production, sale, or transportation of any Product delivered or Services performed hereunder, except where the Law otherwise provides. BASF | Nunhems will provide Buyer with a tax invoice as required by Applicable Law.
5. Price Lists include the standard packaging charges. Product is packaged under controlled moisture conditions. Non-standard packaging may be available at an additional charge to Buyer.
6. Payment must be received by BASF | Nunhems within thirty (30) days after the invoice date, unless otherwise agreed in the Agreement. If Buyer has not fulfilled its payment obligation during this thirty (30) day period, Buyer will automatically and without formal notice be in Default. Buyer will then owe interest at a rate of one and a half percent (1.5%) per month or up to eighteen percent (18%) Annual Percentage Rate (APR), whichever is higher, on the outstanding amount as from the date of Default. Any payment made by Buyer will be credited first against any interest that Buyer has incurred.
7. BASF | Nunhems is not responsible for any delay in the receipt of invoices by Buyer for reasons that are not attributable to BASF | Nunhems, including delays due to transit times.
8. Notwithstanding Article 3.6 above, BASF | Nunhems reserves the right to require full payment (or appropriate payment guarantees) prior to or upon shipment of the Product to Buyer or performance of Services for Buyer.
9. If payment in instalments has been agreed between Parties, the entire remaining amount will become due immediately (without notice of Default being required) in the event of late payment of an instalment. The provisions of Article 3.6 apply accordingly.
10. If Buyer fails to fulfil one or more of its payment obligations under the Agreement (including delay of payment):
  - BASF | Nunhems' obligations will automatically and immediately be suspended until Buyer has paid all

amounts due and payable by it, including payment of any legal and court costs and fees; and

- BASF | Nunhems may demand full payment (upfront) and/or sufficient security from Buyer, for instance in the form of a bank guarantee to be issued by a reputable banking institution in BASF | Nunhems' country, regarding the performance by Buyer; and
  - BASF | Nunhems is entitled to terminate the Agreement with Buyer with immediate effect without penalty or liability, including without any obligation to compensate Buyer in any way.
11. Under no circumstances is Buyer authorized to delay any payments due or to deduct or set off any amount from BASF | Nunhems' invoices due, without the prior written consent of BASF | Nunhems.
  12. BASF | Nunhems may at its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.
  13. Buyer is not allowed to invoke suspension of payment and/or settlement of Claims without the prior written approval of BASF | Nunhems.
  14. If BASF | Nunhems has a Claim against an Affiliate of Buyer — and that Affiliate is in a state of bankruptcy or liquidation or has been granted suspension of payment, Nunhems may set off that Claim against any Claim that Buyer may have against BASF | Nunhems, even if BASF | Nunhems' Claim may not have become payable at that time.
  15. If Buyer experiences an insolvency event due to liquidation, declaration of bankruptcy, or is granted a suspension of payments, Buyer's payment obligations will become due immediately and BASF | Nunhems will be entitled to suspend the further performance of the Agreement or to dissolve the Agreement, all of this without prejudice to BASF | Nunhems' right to claim damages and without liability or penalty to Buyer, including being liable for any compensation towards Buyer itself.
  16. If Buyer fails to perform one or more of its obligations under the Agreement and the Terms, all costs of obtaining payment in and out of court, including legal, collection, and court costs and fees and/or repossession of Product (and any Derivatives), will be for Buyer's account, including the interest due in respect of these costs.
  17. BASF | Nunhems reserves the right to require payment for Product and freight prior to shipment of Product or the performance of Services, as applicable, if Buyer has not established Credit Privileges with BASF | Nunhems.
  18. If Buyer, in Seller's sole judgment, does not qualify for Credit Privileges, Orders, and shipment requests from Buyer will be subject to refusal, delay, or cancellation until Buyer has made any and all required payments or made payment arrangements satisfactory to BASF | Nunhems, as determined in BASF | Nunhems' sole judgment, for Buyer to establish or re-establish Credit Privileges.
  19. In the event of Buyer's Default, BASF | Nunhems shall have the right, in addition to any other rights hereunder, to repossess any and all Product to which BASF | Nunhems has retained title and to take possession of any Derivatives thereof.
  20. All payments to BASF | Nunhems must be made in the form of ACH, wire transfer, or credit card (subject to processing fee) transaction, in U.S. dollars, unless otherwise agreed upon in writing (e-mail notice is sufficient) by BASF | Nunhems.

#### **Article 4. Harvesting and Processing Reservation**

1. All deliveries are subject to the customary harvesting and processing reservation. If BASF | Nunhems invokes the harvesting or processing reservation, BASF | Nunhems is

not obliged to supply, but will, if possible, try to supply pro rata to the quantity ordered or equivalent alternatives. Buyer is not entitled to any compensation for Claims or costs if BASF | Nunhems invokes this reservation.

2. All Product sold or provided pursuant to these Terms may be subject to certification of PVP or to a claim of Breeder's Rights. Use of the Product for the purpose of harvesting seed is strictly prohibited. In addition to other remedies available to BASF | Nunhems under Law or equity, BASF | Nunhems must be promptly notified and royalties must be paid to BASF | Nunhems if a crop grown from such product is harvested for seed purposes. The sale of Product does not give Buyer a license to multiple Product under any of BASF | Nunhems' PVPs or Breeder's Rights.
3. Article 5.10 and Article 9.3 are fully applicable when BASF | Nunhems invokes the harvesting or processing reservation.

#### **Article 5. Packaging and Delivery**

1. Buyer must specify in writing, upon placing its Order or at BASF | Nunhems' first request, which data, Specifications, and documents are required pursuant to the rules and regulations of the (final destination) country in which the delivery of Product must take place, such as those relating to
  - invoicing; and
  - phytosanitary requirements; and
  - international certificates; and
  - import permit or statements; and
  - Buyer's purchase for an organic program, if applicable.
2. If the Buyer fails to fulfil the obligation referred to in the previous paragraph, Buyer will be in Default by operation of Law, without notice of Default being required. Buyer is liable for any damage suffered by BASF | Nunhems because of incorrect or missing information as well as information not received in due time.
3. Notwithstanding the foregoing and only if feasible for BASF | Nunhems, in case the Buyer requires additional documents for the purpose of (re)exporting the Product either within the U.S. or outside the U.S., a request to that effect must be made upon placing an Order as stated in Article 5.1. BASF | Nunhems is entitled to ask and request additional information to that effect to further assess whether additional documentation can be provided. BASF | Nunhems reserves the right to deny the provision of documentation if any applicable rules, regulations or laws do not allow for the (re)exportation or if BASF | Nunhems foresees an imminent risk in doing so.
4. Product is packed by BASF | Nunhems in its own packaging. Buyer is prohibited from repacking the Products and Buyer must not alter, remove, conceal, or temper any label or batch number or other Specifications on the packages.
5. BASF | Nunhems will always act to the best of its ability in fulfilling its delivery obligations. Sound fulfilment of BASF | Nunhems' obligation to deliver also includes delivery with a minor difference in size, packaging, number, or weight.
6. BASF | Nunhems is permitted to deliver Partially Fulfilled Orders. In the event of a Partially Fulfilled Order, BASF | Nunhems has the right to invoice each part of the Order separately.
7. Shipments will be delivered in accordance with Incoterms® 2020. Deliveries will be made CIP (Carriage & Insurance Paid) to the Destination, unless Parties agree upon otherwise in writing (e.g., via the Order Acknowledgement). Notwithstanding the foregoing, the transportation and documentation costs will be passed on to Buyer. **BASF | Nunhems' Indemnitees disclaim all liability for any carrier delivery delays regardless of whether the carrier is selected by Buyer or BASF | Nunhems.**

8. BASF | Nunhems undertakes to deliver within a reasonable period after the Agreement was concluded in accordance with the sowing or planting season.
9. Any timeframes quoted by BASF | Nunhems for delivery of the Product are estimates only and thus not of the essence. In the event of late delivery, Buyer must therefore give BASF | Nunhems notice of Default in writing and grant it a reasonable period in which to perform the Agreement.
10. Buyer agrees to accept delivery of the Product at any time between 8.00 am to 5.00 pm (applicable local time zone) on a Business Day.
11. If BASF | Nunhems fails to deliver some or all the Products in due time for reasons attributable to BASF | Nunhems, Buyer will not be entitled to cancel any Order pursuant to the Agreement.
12. Buyer is not allowed to return the Products to BASF | Nunhems unless BASF | Nunhems gives its prior written permission and all return authorization documentation required by BASF | Nunhems is completed and furnished by Buyer. However, under no circumstance will BASF | Nunhems consider acceptance of returned Product when the original packaging has been opened or tampered with, or if the conditions of storage have not been fulfilled as indicated by BASF | Nunhems. The costs and expenses of approved and compliant returned shipments shall be at the Buyer's account.

#### **Article 6. Retention of Title**

1. BASF | Nunhems' IP Rights, which shall always remain with BASF | Nunhems, title in and to the Product delivered by Nunhems and/or the Derivatives therefrom will remain within BASF | Nunhems, until Buyer has paid for the totality of the Product and has properly fulfilled all obligations under the Agreement towards BASF | Nunhems in connection with the deliveries.  
During the period of retention of title by BASF | Nunhems, Buyer will (a) handle the Product with due care; (b) have the Product properly insured; and (c) store Products delivered by BASF | Nunhems separately from other seed and plant products and ensure such Product is clearly marked as BASF | Nunhems' property. The Product should be stored according to BASF | Nunhems' storage conditions so that the quality can be preserved.
2. Product delivered by BASF | Nunhems to which the retention of title pursuant to Article 6.1 applies may be resold or used by Buyer only if there is a fully executed distribution agreement in place by and between the Parties. If the Product is resold pursuant to the terms of such a distribution agreement, Buyer is obliged to deliver the Product with retention of title by BASF | Nunhems to Buyer Customers.
3. It is prohibited for Buyer, Buyer Contractors, or Buyer Customers to establish a pledge or lien on the Product subject to retention of title by BASF | Nunhems.
4. If the Law of the Destination country provides for more restrictive or stringent requirements for retention of title than those referred to in this Article 6, such options are deemed to have been agreed to by the Parties.
5. In the event of Buyer's Default (as described in Article 3) BASF | Nunhems or its representative will be entitled, upon reasonable advance notice to Buyer, to enter premises (including full right of ingress and egress over, along, across, and upon the premises) occupied by Buyer to search for and remove any of the Product to which BASF | Nunhems retains title without penalty or liability to Buyer, and BASF | Nunhems may dispose of or retain such Product as BASF | Nunhems sees fit without being required to give additional notice or account to Buyer. All costs and expenses incurred by BASF | Nunhems as a result of taking action in accordance with this Article, together with transportation and

storage charges, must be paid in full by Buyer to BASF | Nunhems upon first request.

#### **Article 7. Services.**

1. Standard seed treatment is as described in the applicable Price List. All seed treatments will be applied at the manufacturer's labelled recommended rate.
2. If Buyer purchases non-treated seed from BASF | Nunhems, Buyer accepts responsibility for all risks of using such non-treated seed. **BASF | Nunhems and BASF | Nunhems' Affiliates disclaim all liability and responsibility arising from or in connection with the use of non-treated seed.**
3. Product treated with a Custom Seed Treatment may be available to Buyer for an additional charge. If Custom Seed Treatment is provided, BASF | Nunhems may require, as a condition of sale, Buyer to purchase up to 105% of the ordered quantity for each applicable Product variety and Custom Seed Treatment requested.
4. Testing requested by Buyer in addition to the testing Seller normally performs on the Product may be available to Buyer for an additional charge. **BASF | Nunhems assumes no responsibility for such additional testing (whether performed by BASF | Nunhems or a Third-Party Service Provider) beyond making commercially reasonable efforts to help facilitate such testing.**
5. In the event Services are performed on the Product by a Third-Party Service Provider and such Product will be shipped to Buyer from such Third-Party Service Provider following completion of Services, Buyer acknowledges that Buyer may be invoiced for such Services prior to Services being performed and title of Products will transfer to Buyer upon shipment of the Product to the Third-Party Service Provider by BASF | Nunhems.
6. BASF | Nunhems may change the Third-Party Service Provider that it uses from time-to-time without notice to Buyer. BASF | Nunhems reserves the right to reject any third-party service provider recommended to BASF | Nunhems by Buyer for any reason.
7. BASF | Nunhems will not accept returns of any treated or enhanced Product, even if the seed treatment and/or enhancement Services were facilitated by BASF | Nunhems.

#### **Article 8. Provision and Use of Information, Nunhems' Sole and Exclusive Warranty, and Warranty Disclaimers**

1. The Product delivered by BASF | Nunhems is intended to produce plants and are neither in an unprocessed nor in a processed condition intended for human or animal consumption. The plants produced from the Product in question may only be used for human or animal consumption if the plants have been completely separated from the Product delivered. The Product delivered may not be used to produce sprouting vegetables as the sprouting vegetables will be consumed with the Product. **BASF | Nunhems is not liable for any substances and/or micro-organisms that are present on and/or in the Product.**
2. All Information is based on the assessment by BASF | Nunhems of its test results and practical experience and are therefore provided for reference only and not as an indication of quality and/or guarantee. Product representations, including photographs, on packaging, advertising, technical publications, and web sites represent kind only. A Product variety may differ from such representations in color, shape, and size. **BASF | Nunhems has no liability of any kind in connection with or arising out of Information provided or displayed, including for different results in the cultivated Product.**
3. Buyer agrees that any Information given or provided by BASF | Nunhems is done so without commitment and without any warranty whatsoever, whether express, implied, or statutory as to any matter and shall not be relied on as

such. Unless specifically agreed by the Parties, no suitability for a particular use shall be presumed or implied; therefore, Buyer itself must determine whether the Product is suitable for the intended growth/crop and/or can be used in the local conditions. **Thus, the risk and responsibility of respective suitability lies solely with Buyer.**

4. Any kind of Information of the Product regarding quality or performance only applies to the results obtained by BASF | Nunhems at the time of testing with the specific seed sample used and under the conditions under which the test was performed. Tests have not been performed under all possible conditions or agronomic practices. No direct relationship may be assumed between the Information provided and the results achieved by Buyer. The results achieved by Buyer depend, among other factors, on the location, climatic conditions, and cultural practices. **BASF | Nunhems disclaims all liability regarding the Information, including for different results in the cultivated Product.** Again, Buyer itself must determine whether the Product is suitable for the intended growth/crop and/or can be used in the local conditions.
5. Failure of seed to germinate and/or reduction of yield may occur as a result of multiple environmental and agronomic factors. **If BASF | Nunhems has specified a germination capacity, it is based only on reproducible laboratory tests performed on representative samples and is not a warranty of actual emergence.** No direct relationship may be assumed between the specified germination capacity and the emergence of the Product by Buyer. This specified germination capacity merely indicates the germination capacity at the time when and in the circumstances in which the test was performed. Emergence depends, among other things, on the location, cultivation measures, the manner of cultivation (sowing medium used, soil conditions) and climate conditions at the location(s) of Buyer.
6. Buyer accepts that grafting onto a rootstock can have negative effects on the properties and resistance of the Product. **BASF | Nunhems cannot be held liable for loss of or damage to the Product that has been grafted by the Buyer or a third party at Buyer's request. Any use of or grafting of the Product with a rootstock is entirely at Buyer's own risk and responsibility.**
7. Buyer accepts that there are and/or may arise certain mutations of a pest or pathogen for which BASF | Nunhems' high resistance varieties do not possess the High Resistance needed or for which the degree of resistance has not yet been determined or cannot immediately be determined.
8. Seeds at times carry seed borne diseases that may not be apparent to Buyer or Buyer Customers. BASF | Nunhems makes no representation that its seed Product is (a) free of seed-borne diseases whether previously known to exist or not identified until this seed Product is grown; (b) is Resistant (as defined in Article 9) to known or unknown mutations of disease; or (c) the crops grown from the Product will not react adversely to certain environmental conditions. Buyer is solely responsible for the decision to select, purchase, resell, distribute, or otherwise use the Product. **All risks of non-performance, reduced performance, or crop damage due to these factors are hereby assumed by Buyer.** This allocation of risk is reflected in the List Price of the Product.
9. Any kind of warranty (if applicable) on the part of BASF | Nunhems will lapse and be rendered void if Buyer or anyone on Buyer's behalf, either in whole or in part, modifies the Product in any way, including by: (a) manipulating or processing the Product or having the Product processed or treated; (b) repackaging the Product or having the Product repackaged; (c) using and/or storing the Product incorrectly or having the Product used and/or stored incorrectly; or (d)

not using the Product in the normal course of business of Buyer.

10. **BASF | NUNHEMS STATES, AS ITS SOLE AND EXCLUSIVE WARRANTY IN CONNECTION WITH THE PRODUCT, THAT, WHEN SHIPPED, THE PRODUCT CONFORMS TO THE CONTAINER LABEL DESCRIPTIONS THAT ARE REQUIRED BY STATE AND FEDERAL LAW. PRODUCT SPECIFICATIONS ARE NOT A GUARANTEE OR WARRANTY. BASF | NUNHEMS FURTHERMORE DOES NOT WARRANT THAT THE PERFORMANCES RENDERED WILL COMPLY WITH THE PURPOSE TO WHICH THESE ARE PUT BY BUYER.**
11. **EXCEPT AS STATED IN ARTICLE 8.10, BASF | NUNHEMS MAKES NO WARRANTIES REGARDING ITS PRODUCT OR SERVICES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM TRANSMISSION DISEASES, RESISTANCE TO DISEASES, OR ANYTHING SIMILAR.**

#### **Article 9. Immunity, Resistance, and Susceptibility**

1. As used in the Information supplied by BASF | Nunhems, "immunity, resistance and susceptibility" shall mean the following:
  1. **Immunity:** means the plant variety is not subject to attack or infection by a specified pathogen or pest.
  2. **Resistance:** means the ability of a plant variety to restrict the growth and development of a specified pathogen or pest and/or the damage they cause when compared to susceptible plant varieties under similar environmental factors and pathogen or pest pressure. Resistant varieties may exhibit some disease symptoms or damage under heavy pathogen or pest pressure.  
Two (2) levels of resistance are defined:
    - (i) **High resistance (HR\*):** means plant varieties that highly restrict the growth and development of the specified pathogen or pest under normal pathogen or pest pressure when compared to susceptible varieties. These plant varieties may, however, exhibit some symptoms or damage under heavy pathogen pressure.
    - (ii) **Intermediate resistance (IR\*):** means plant varieties that restrict the growth and development of the specified pathogen or pest but may exhibit a greater range of symptoms or damage compared to resistant varieties. Moderately/intermediately resistant plant varieties will still show less severe symptoms or damage than susceptible plant varieties when grown under similar environmental factors and/or pathogen or pest pressure.  
\* The standard abbreviations HR (high resistance) and IR (intermediate resistance) are used in all languages.
  3. **Susceptibility:** means the inability of a plant variety to restrict the growth and development of a specified pathogen or pest.

#### **Article 10. Waiver of Consequential Damages, Limitations of Liability, Exclusive Remedy, and Indemnification**

1. The following provisions of this Article 10 set out the entire and exclusive liability of BASF | Nunhems, including for liability arising out of, in connection with, or related in any way whatsoever to the Agreement, Product, Services, or Derivative and such liability, if any, will be subjected to the maximum extent permitted under Applicable Law.

2. **BASF | Nunhems is under no circumstances liable to Buyer Indemnitees (or any third party) for Consequential Damages. This waiver of Consequential Damages applies to any Complaint or Claim brought against BASF | Nunhems, regardless of the legal basis of such Complaint or Claim; in contract, tort, negligence, strict liability, or otherwise.**
3. Nunhems will be not liable for any Complaint or Claim suffered by Buyer Indemnitees arising out of any (a) shortcoming or delay in BASF | Nunhems' performance under the Agreement including in the case of Force Majeure; (b) failure to deliver or provide the Product or Services (or any part of them); (c) failure to deliver Product in the requested quantities; or (d) delay or failure of Buyer to promptly notify BASF | Nunhems in the event of an actual or potential Complaint or Claim to the extent that, such delay or failure is prejudicial to or otherwise materially adversely affects Buyer. **Except as otherwise stated in these Terms and subject to Article 10.5, BASF | Nunhems' liability and Buyer Indemnitees' exclusive remedy hereunder shall be limited to a refund of the price paid for the Product delivered or Service performed that is at issue with respect to the Complaint or Claim.** This limitation of liability shall be applicable to any Complaint or Claim presented to BASF | Nunhems whether the legal theory forming the basis of such Complaint or Claim involves contract, tort, negligence, strict liability, or otherwise.
4. Notwithstanding the foregoing, nothing excludes or limits BASF | Nunhems' or Buyer's liability to the extent of the relevant Party's: (i) intentional misconduct or gross negligence; and/or (ii) any liability that cannot be excluded or limited under Applicable Law.
5. Buyer shall defend, hold harmless, and indemnify BASF | Nunhems Indemnitees against any and all Complaints and/or Claims of third parties for actual or alleged damages or losses which have been caused by or are otherwise connected with any Product, Services, or Derivatives delivered by BASF | Nunhems, including Complaints or Claims made against BASF | Nunhems Indemnitees in BASF | Nunhems' and its Affiliates' capacity as producer of the Product based on any rule concerning product liability in any country, except to the extent such Claim is caused by gross negligence or intentional misconduct on the part of BASF | Nunhems and/or its employees. Buyer undertakes to subscribe to and maintain an appropriate insurance against Complaints and Claims arising from the indemnification provided for in this Article, and a certificate of insurance will be provided to BASF | Nunhems at BASF | Nunhems' request.
6. Buyer Indemnitees shall always mitigate and limit as much as possible all loss and damage in relation to which the Buyer submits a Complaint or Claim against BASF | Nunhems Indemnitees.
7. No Complaint or Claim under the Agreement may be asserted or made against a BASF | Nunhems' Indemnitee or submitted to arbitration (a) on a date later than one year after the date in which facts given rise to such Complaint Claim are discovered, or with the exercise of due diligence, should reasonably have been discovered; or (b) in the event Buyer fails to give notice of the Complaint Claim pursuant Article 11 below.

**Article 11. Defects and Notice of Complaint and Claims**

1. Buyer must inspect the Product purchased within five (5) Business Days of receipt of delivery. In doing so, Buyer must check whether the Product delivered and/or Services performed comply with the Agreement, i.e.:
  - whether the correct Product has been delivered.
  - whether the Services were performed in accordance with the terms of the Agreement.

- whether the quantity of the Product delivered corresponds with the Agreement.
  - whether the Product and/or Services meet the agreed Specifications or quality requirements or, if none were agreed, the requirements that may be stipulated for normal use or trading purposes.
  - whether the Product (and/or packaging) was received damaged or in poor condition or whether the shipment was incomplete.
2. If apparent defects or deficiencies in the Product or Services are established, including in the packaging, Buyer must inform Customer Services accordingly in writing within five (5) Business Days after receipt of delivery, as applicable, specifying the batch, delivery note, and/or invoice details as well as any supporting evidence (including photos, expert statements, etc).
  3. Buyer must report any alleged non-apparent defect in the Product, Services, or Derivative to Customer Service in writing within five (5) Business Days of the date on which the alleged defect concerned was or could reasonably have been discovered by Buyer, specifying the batch, delivery note, and/or invoice details as well as any supporting evidence (including photos, expert statements, etc.).
  4. Buyer must provide reasonable cooperation to BASF | Nunhems including Customer Service so that an immediate inspection of the allegedly defective Product, Service, Derivative, and/or crop can be made, including preservation of the Product or plant material in manner that will permit it to be tested.
  5. Complaints and Claims must be described in such a manner that BASF | Nunhems or a BASF | Nunhems' representative or agent can reasonably verify them. For that purpose, Buyer and Buyer Contractors must also keep records and evidence regarding the use, storage, and condition of the Product and/or Derivative and the same obligation should apply in the event of resale to Buyer Customers to whom the Product or Derivative have been resold, to the extent possible. In the case that any Complaint or Claim is not reported to BASF | Nunhems in writing within the stated period under these Terms, the Complaint or Claim will be rejected. Timing filing of a Complaint or Claim by Buyer will not suspend Buyer's obligation to pay any outstanding invoiced amount on time.
  6. In the event of a dispute between the Parties concerning the germination capacity, varietal trueness, varietal purity, or technical purity and health, a (re)inspection may be performed by (and arranged by BASF | Nunhems) Naktuinbouw (Netherlands Inspection Service for Horticulture), having its registered office in Roelofarendsveen, the Netherlands, for the account of the non-prevailing Party. The inspection will be performed on the basis of a sample taken at BASF | Nunhems by Naktuinbouw and retained by them. The outcome of this (re)inspection will be binding on both Parties, without prejudice to the Parties' right to submit disputes regarding the consequences of this outcome to the institutes referred to in Article 18.
  7. Complaints or Claims concerning an invoice of BASF | Nunhems must be submitted to BASF | Nunhems in writing to Customer Service within fourteen days (14) after the invoice date.
  8. Notice of a defect, Complaint, or Claim by Buyer must be sent to Customer Service at the address set forth above in Article 1.

**Article 12. Use of Brands**

1. Buyer acknowledges and accepts that BASF - Nunhems or the relevant BASF - Nunhems' Affiliate, has the exclusive right, title, and interest to Brands, including design and colour scheme.

2. Buyer may not use, nor cause to or seek to register Brands used by BASF - Nunhems to distinguish Buyer's products, Derivatives, and/or Plant Parts from those of third parties, and Buyer may not use, register, or cause to register trademarks, logos, or other symbols, denominations, variety names, domain names, company names, trade dress resembling, or confusingly similar to Brands and/or Plant Parts. This does not apply to the trading of BASF - Nunhems' Product in their original packaging material. If the Product delivered is sold or otherwise provided to a third party, Buyer must ensure that the requirement under this Article 12.2 herein is imposed on that third party on penalty of damages.

#### **Article 13. Intellectual Property Rights**

1. Buyer acknowledges and accepts that BASF | Nunhems or the relevant BASF | Nunhems' Affiliate, retains all right, title, and interest in and to the Intellectual Property Rights protecting its Product and Plant Parts, including any mutations, sports, and material obtained therefrom or included therein. Nothing in these Terms shall be construed as granting Buyer any license to any of BASF | Nunhems' Intellectual Property Rights. Buyer acknowledges that Product and Plant Parts protected by Intellectual Property Rights may not be reproduced without BASF | Nunhems' prior written permission.
2. The Product supplied by BASF | Nunhems may only be used by Buyer, Buyer Contractors, or Buyer Customers for the cultivation of end products and/or other finished products on Buyer's premises. Buyer may only produce a single plant of each of the supplied seed of Product without the rights of any vegetative propagation thereto.
3. The Derivative, derived from the Product supplied to Buyer, may only be sold by Buyer under the variety name registered by BASF | Nunhems.
4. During normal business hours, Buyer shall allow BASF | Nunhems – or a third party that carries out inspections on behalf of BASF | Nunhems – direct access to the businesses and premises of Buyer, Buyer Contractors, and Buyer Customers (including and in particular the greenhouses, fields, storage areas/facilities, and equipment of such businesses) for inspections to verify compliance with this Article 13. Buyer, Buyer Contractors, and Buyer Customers shall upon request also allow BASF | Nunhems and/or its third-party inspector access to records and accounts that are relevant to these inspections. Except in the case of a Complaint or Claim, BASF | Nunhems will inform Buyer at least five (5) Business Days in advance of any such visit under this Article 13.4. Buyer shall impose the aforementioned obligations in its contracts with Buyer Contractors and Buyer Customers.
5. If Buyer or Buyer Contractor finds one or more Mutant Materials, Buyer shall immediately (in no event longer than two (2) Business Days from date of discovery) inform Sales Representative by phone and Customer Service in writing thereof and must abstain from any use, multiplication, and/or reproduction (propagation) thereof.
6. Upon BASF | Nunhems' first request, Buyer will provide BASF | Nunhems with test Mutant Materials within two (2) months of receiving the request. Buyer acknowledges and agrees that propagation and commercialization of the Mutant Materials may require the permission of BASF | Nunhems as the owner of the "parent variety" to carry out any of the following acts: production or reproduction (propagation), conditioning for the purposes of propagation, offering for sale, selling, or otherwise introducing to the market; export; import or storage for one of the purposes mentioned above.
7. If Buyer resells the Products of BASF | Nunhems to Buyer Customers, Buyer shall impose unabridged the obligations it has under this Article 13 upon such Buyer Customers,

including the obligation for that Buyer Customer impose the same obligations upon its buyer and so forth.

#### **Article 14. Force Majeure**

1. BASF | Nunhems may delay its performance of an obligation under these Terms due to a Force Majeure whether or not it directly affects BASF | Nunhems if and in so far as this circumstance makes performance impossible or unreasonably complicated or expensive.
2. BASF | Nunhems will inform Buyer as soon as possible if BASF | Nunhems is unable to deliver in time due to Force Majeure.
3. If the event of Force Majeure lasts longer than three (3) months, both Parties will be entitled to dissolve the Agreement. In that case neither Party will be required to pay any damages to the other Party.
4. Force Majeure also means any circumstance that gives reason to rely on the harvesting and processing reservations usual in the seed industry. Such circumstances entitle BASF | Nunhems to deliver to the Buyer a pro rata volume of the Order, without prejudice to any other rights of BASF | Nunhems under this Article.
5. Insofar BASF | Nunhems has Partially Fulfilled Order under these Terms at the time of the occurrence of a Force Majeure, BASF | Nunhems is entitled to invoice the Partially Fulfilled Order separately and Buyer is obliged to pay this Partially Fulfilled Order pursuant to the terms of the Agreement.

#### **Article 15. Export Control**

1. Buyer hereby acknowledges and agrees that (a) Product offered by BASF | Nunhems is intended for shipment to North America (USA and Canada) destinations only. Export or re-export of Product must be in accordance with U.S. Export Administration Regulations. Diversion contrary to U.S. Law is prohibited and (b) Product delivered by BASF | Nunhems may be subject to Sanctions Rules. Buyer shall comply with the Sanctions Rules and agrees that Buyer alone is responsible for ensuring its compliance with these Sanctions Rules. In particular, but without limitation, Buyer will not, and will ensure that its Affiliates do not, sell, resell, export, reexport, dispose of, disclose, or otherwise deal with Product, directly or indirectly, to any country, destination, or persons without first obtaining any required export license or other governmental approval and completing such formalities as may be required by Sanctions Rules. Buyer shall not do anything which would cause BASF | Nunhems to be in breach of the Sanctions Rules and **Buyer shall protect, indemnify and hold harmless BASF | Nunhems' Indemnitees from any Claim incurred by one or more BASF | Nunhems' Indemnitees as a result of the failure of Buyer to comply with this Article 15.**
2. Failure by Buyer to comply with any part of this Article 15 shall constitute a material breach of the Agreement. BASF | Nunhems reserves the right to refuse to (a) enter into an Order; (b) perform any Order; and/or (c) cancel any Order at its sole discretion and option if BASF | Nunhems believes Buyer has failed to comply with any part of this Article 15.

#### **Article 16. Confidentiality**

1. All Confidential Information that the Buyer becomes aware of or comes into its possession in connection with the performance of the Agreement, shall be kept confidential and must not be disclosed to third parties without the prior written consent of BASF | Nunhems.
2. The duty of confidentiality provided for in this Article 16 does not apply to information that Buyer can demonstrate that: (a) it was as evidenced by Buyer's written records, lawfully in Buyer's possession prior to its disclosure by BASF |

Nunhems and has not been obtained directly or indirectly from BASF | Nunhems; or (b) has lawfully come into Buyer's possession on a non-confidential basis from a third party in breach of any obligation of secrecy or confidentiality; or (c) has become public knowledge after its disclosure to Buyer, other than through a breach of the Agreement or any other confidential obligation.

#### **Article 17. Compliance with Applicable Laws**

1. The Parties will strictly comply with Applicable Laws including national and international competition law, antibribery, and corruption laws, international money laundering laws, and international (export) sanctions.

#### **Article 18. Governing Law and Arbitration**

1. All agreements between BASF | Nunhems and Buyer are governed by the laws of the State of Delaware, without reference to conflict of laws principles.
2. The United Nations Convention on the Contracts for International Sale of Goods (the Vienna Sales Convention) shall be excluded.
3. **Notice of Required Arbitration/Conciliation Mediation Required by Several States:** Under the Seed Laws of several 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 consumer shall file a complaint (sworn for some states) along with the required filing fee (where applicable) with the Designated State Authority 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 shall be sent to BASF | Nunhems by certified or registered mail or as otherwise provided by statute. **PLEASE CONSULT YOUR STATE DEPARTMENT OF AGRICULTURE** for specific requirements as to filing procedures, fees, scope of application, statutory period of limitations, etc., as soon as Buyer learns of the facts upon which a Claim is to be based before any legal action is initiated. Failure to follow this procedure could limit Buyer's legal rights or limit the amount of damages Buyer may be able to recover, depending on the law of Buyer's state.
4. In the event that the provisions of Article 18.1 do not apply, or if conciliation or mediation thereunder is not successful, the Parties agree that any dispute concerning these Terms or the quality, performance, or availability of Product and/or Services provided hereunder shall be resolved by binding arbitration. Such arbitration shall be held in Ada County, Idaho in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and Delaware law (excepting conflict of law provisions) shall be applied.
5. If a Party fails to appear at the arbitration proceeding after reasonable notice or fails to produce evidence demanded by the arbitration panel, the arbitration panel is authorized to make its award based on the evidence produced at the hearing.
6. The decision of the arbitration panel shall be final and may be entered as judgment in any court of competent jurisdiction.
7. The arbitration panel shall be directed to divide the costs of the arbitration between the Parties in accordance with the panel's findings as to relative liability between the Parties and shall have the right to award to the Party determined to be the prevailing Party an amount equal to reasonable attorneys' fees which shall then be due from the non-prevailing Party.
8. **Buyer and BASF | Nunhems acknowledge that they are waiving their right to a trial by jury with respect to the**

**Agreement or to the quality, performance, or availability of Product and/or Services provided hereunder.**

#### **Article 19. Non-GMO statement**

1. The Product which are supplied to Buyer are varieties which do not qualify as varieties regulated under GMO-legislation and are not developed by using technologies of recombinant DNA or targeted genome optimization. The methods used in the development and identity preservation of these varieties are aimed at avoiding the presence of off-types, which includes avoiding the presence of GM material which includes recombinant DNA or material which may have been modified using targeted genome optimization. **Seed production has been carried out in accordance with production rules in the country where production took place, including stipulated isolation distances. BASF | Nunhems is committed to the proper stewardship of its Product, supports and has affirmed its commitment to the Excellence Through Stewardship™ industry stewardship initiative to be found at the following website:**  
<https://www.excellencethroughstewardship.org/>  
**However, due to free circulation of pollen and because it cannot be excluded that GM material is cultivated by others in seed production areas, admixtures with GM material cannot totally be prevented. Therefore, no guarantee can be given that the seed lots of Product comprising the Order delivery are free from any traces of GM material.**

#### **Article 20. General**

1. In these Terms, the Agreement, and any Other Agreement executed in writing by and between the Parties to which the subject matter of these Terms relate, where the context requires, all references to:
  - a. a "person" includes a corporation, unincorporated association, partnership, joint venture or public, statutory or governmental association or agency;
  - b. the singular includes the plural and the plural includes the singular;
  - c. the words "hereof", "herein", and "hereunder" and words of similar import referring to these Terms refer to these Terms as a whole and not to any particular provision of these Terms;
  - d. all references to "\$" will be deemed references to United States dollars;
  - e. all references to "U.S." will be deemed references to the United States of America. the word "including", and similar expressions are not words of limitations;
  - f. a reference to conduct includes any omission and any statement or undertaking, whether or not in writing; and
  - g. where an act is to be performed on a day that is not a Business Day, the act will be required to be performed on the following Business Day.
2. Any notice, request, demand, consent, approval, or other communication provided for in the Agreement shall be sufficient if in writing and shall be deemed to have been duly given (a) when hand delivered or dispatched via E-mail Notification; (b) one (1) Business Day after having been sent for next-day delivery by a nationally recognized overnight courier service; or (c) five (5) Business Days after having been mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, to the Party to whom such notice is intended to be given, at the last address that Party has indicated in writing be used for such purposes.
3. If a provision of the Agreement is or becomes invalid, that provision will automatically (by operation of Law) be replaced by a valid provision that corresponds as closely as possible to the purpose of the invalid provision. Parties must,

if necessary, enter reasonable consultations about the text of that new provision. In that case the other provisions of the Agreement will remain fully valid in so far as possible.

4. These Terms may be amended by BASF | Nunhems from time to time at its own discretion, without giving prior written notice to Buyer. BASF | Nunhems shall use its commercially reasonable efforts to publish the latest version of these Terms on its website(s) and a copy of the latest version of these Terms can be requested at any time by the Buyer from Customer Service. A new version of these Terms replaces previous versions thereof and shall apply to all Offers, Orders, and other agreements by and between the Parties.
5. The Agreement together with any Other Agreement by and between the Parties for purposes of the subject matter covered by these Terms shall contain the entire agreement of the Parties with respect to its subject matter.