

NOTICE, WAIVER, LIMITATION OF LIABILITY AND WARRANTY DISCLAIMER

This Notice, Waiver, Limitation of Liability and Warranty Disclaimer is made by U.S. Seedless, L.L.C. (USS) and/or US Seedless, Inc. (USS) and applies to all transfers of watermelon seed by USS to any person including, but not limited to, its customers, distributors, and dealers. The terms contained herein apply to all transfers of seeds or transplants by USS whether the transfer is made via sale or by free sample or trial.

1. Disease Control Notice: Watermelon crops have been affected by various diseases over the last several years. Watermelon Fruit Blotch or *Acidovorax avenae* subsp. *citrulli* (WFB), and Gummy Stem Blight or *Didymella bryoniae* (GSB) in particular are serious diseases which have become a significant risk in the area of watermelon cultivation. The pathogens causing these diseases and all other watermelon diseases can be introduced into a field by infested seed, infected transplants, infected volunteer watermelon, mechanical means, infected debris, or by natural spread from alternate hosts. **The causes of these diseases are due to factors beyond the control of USS and USS cannot guarantee that the seeds are free of WFB, GSB or any other disease.** It is scientifically impossible to conduct any testing procedure which will give 100% reliable results with regard to the identification of any seedborne WFB, GSB or other infection. Nonetheless, USS is using its best efforts to test all of its seed lots. Consequently, 10,000 seeds from each lot have been tested pursuant to current industry standards, and no symptoms or indicators of WFB, GSB or other diseases were found to be present within the known limits of detection. USS recommends that the buyer examine all seed purchased carefully and conduct any tests it deems necessary to reduce the possibility that any seeds are infected with WFB, GSB or any other seedborne disease. The buyer agrees that any seed or plants purchased from USS will be produced or grown in accordance with the “Guidelines for Control of Bacterial Fruit Blotch in Watermelon” as published by the National Watermelon Association, Inc., August 1996, including any subsequent amendments.

2. Waiver and Limitation of Liability: USS and the undersigned acknowledge that this transfer of watermelon seed is a commercial transaction between merchants with respect to goods of this kind. As a condition of sale of all watermelon seeds sold by USS or transplants grown from USS seeds and with respect to all USS seeds or transplants grown from USS seeds provided as free samples or trials, the undersigned acknowledges that he has been informed of the risks associated with the potential presence of WFB, GSB, or any other diseases and hereby waives any right to assert any claims against USS, whether for breach of contract, tort, negligence, strict liability, or otherwise. The undersigned also releases USS, its distributors, its dealers, agents and suppliers from any and all claims relating to WFB, GSB or any other diseases with respect to all USS watermelon seed or transplants grown from USS seed supplied by USS or its dealers. The undersigned expressly acknowledges that his exclusive and sole remedy against USS for any loss resulting from the use of USS seed or transplants grown from USS seed is limited to return of the purchase price of said seed. In addition, the undersigned understands and acknowledges that seedless watermelons are not necessarily 100% free of all seeds, but may contain some edible soft seeds, or some inedible hard seeds. It is understood that seedless watermelon varieties may be affected by environmental conditions including, but not limited to, soil properties, plant spacing, irrigation, climactic conditions, chemical applications, insects, nematodes, virus, bacteria, fungus, or other conditions which may cause stress and/or otherwise pathologically impact the watermelon plants. This in turn may cause an increase in seeds, and variations in watermelon flesh color, size, weight, sugar content, water content, fiber content, and hollow heart condition. Additionally, if any seed is repackaged, all remedies against USS will be waived, including return of the purchase price, and USS will have no liability whatsoever to any other parties.

3. Disclaimer of Warranties:

a. Disclaimer of Express Warranty: Any affirmation of fact or promise made by USS shall not be deemed to create an express warranty that the goods shall conform to the affirmation or promise; any description of the goods by catalogue or otherwise is for the sole purpose of identifying them and shall not be deemed to create an express warranty.

b. Disclaimer of Implied Warranty: **This seed or transplant transfer is made on the express understanding that there is no implied warranty that the goods shall be merchantable and that there is no implied warranty that the goods shall be fit for any particular purpose. The buyer acknowledges that he is not relying upon the seller’s skill or judgment to select or furnish goods suitable for any particular purpose and that there are no warranties which extend beyond the description on the face hereof.**

4. Transplant Grower (“Buyer”) Obligations: The Undersigned Buyer agrees to obtain from each customer or entity to which the Buyer sells USS watermelon seeds or transplants, a duly signed and executed Waiver and Release form in duplicate in the form required by USS. Should the customer be a partnership then all partners must sign the Waiver and Release form. Should the customer be a Company then the Waiver and Release form should be signed by the Directors and Secretary. The

undersigned agrees to inform in writing each customer or entity to which it sells USS watermelon seeds that they are bound by the terms of the Waiver and Release form for all future sales of USS Watermelon seeds. The buyer agrees that failure to obtain the executed grower Waiver and Release form from each purchaser of USS watermelon seed will result in the Buyer accepting liability for any claim demand or action by the purchaser in respect of the seed and the Buyer agrees to indemnify USS and the Reseller/Distributor against any liability in respect thereof.

5. Limitation of Damages: USS shall not be liable for incidental or consequential damages or crop failure damages as a result of the use of USS seed or transplants grown from USS seed.

6. Indemnity: The undersigned agrees that he will not resell or transfer any USS seeds or transplants grown from USS seeds except in compliance with the obligations set forth in paragraph 4 above. The undersigned agrees to defend, indemnify and hold harmless USS against any and all claims, actions, proceedings, judgments, attorney's fees, court costs, or other potential liabilities against USS of any nature whatsoever relating to any resale or transfer of said seeds and transplants.

7. Choice of Law / Choice of Forum / Jury Waiver: The parties agree that this Agreement is entered into in the County of Bucks, Commonwealth of Pennsylvania and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. It is further agreed that any litigation between the parties relating to this Agreement or any sale or transfer of USS seeds or transplants grown from USS seed hereunder shall take place in the County of Bucks, Commonwealth of Pennsylvania. **The undersigned specifically agrees to waive its right to a jury and hereby agrees that any such legal action will be tried without a jury.**

8. Severability: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

I have read the above Notice, Waiver, Limitation of Liability and Warranty Disclaimer, understand it, and agree to be bound by all of its terms. The foregoing terms constitute the entire agreement between the parties regarding the sale or transfer of USS seeds or transplants grown from USS seeds. I also acknowledge that I have had the opportunity to consult with an attorney regarding this notice. I understand this notice is part of my contract and a condition of sale, and that no shipment from USS or a USS dealer will occur until USS and/or the dealer receive this signed notice. I agree to be bound by the foregoing terms for all future transfers of seeds by USS or transfers of transplants grown from USS seeds.

Dated: _____

By: _____
Reseller / Distributor

Dated: _____

By: _____
Buyer / Transplant Grower / Watermelon Grower

(printed name/company)

(address)

(telephone)