

**TRI-HISHTIL, LLC ("Seller")
STANDARD TERMS AND CONDITIONS OF SALE**

1. **OFFER, GOVERNING PROVISIONS AND CANCELLATION.** THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND CUSTOMER WITH REGARD TO PRODUCTS ("GOODS") SOLD BY SELLER TO CUSTOMER, AND SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF NORTH CAROLINA. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. No order may be canceled or altered by the Customer except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. In the event of such an approved cancellation by Customer, Seller shall be entitled to payment of the full price, less the amount of any expenses saved by Seller by reason of the cancellation.

2. **PRICES AND PAYMENT.** All prices listed are payable as stated in Seller's current applicable price list. All prices and payment terms are subject to change without notice, and the price of Goods on order but unshipped will be adjusted to the price in effect at the time of the final accepted order. Payment is due on the terms agreed by Seller in writing, or, if there is no such written agreement, in accordance with the applicable price list, or, if no price list is applicable, upon Customer's receipt of Seller's invoice. Notwithstanding the foregoing, at its sole option at any time, Seller may require Customer to make payment in advance or by irrevocable letter of credit, and may defer shipment or cancel any order if the Customer does not promptly provide such payment or a letter of credit. Any such letter of credit shall be advised for Seller's benefit by a bank acceptable to Seller, shall be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500, 1993 Revision or subsequent revisions), shall provide for payment against Seller's invoice and bill of lading, and shall be in form and substance satisfactory to Seller.

3. **Late Payments.** Any obligation of Customer to Seller not paid as and when due shall bear interest from the due date until paid at the lower of: (a) the prime rate from time to time in effect at Wells Fargo plus 2% per annum, or (b) the highest rate permitted by applicable law.

4. **TAXES AND OTHER CHARGES.** Any tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and the Customer shall be paid by the Customer in addition to the prices invoiced. Customer shall provide Seller at the time the order is submitted with any applicable exemption certificate or other document acceptable to the authority imposing such tax, fee or charge. In the event Seller is required to pay any such tax, fee or charge, the Customer shall reimburse Seller therefor.

5. **Right to Refuse Order.** Seller reserves the right to refuse to accept any order that Tri-Hishtil determines to be detrimental to its best interests.

6. **DELIVERY, CLAIMS AND FORCE MAJEURE.** (a) **Goods.** (i) All shipments will be F.O.B. Seller's plant or other loading point designated by Seller; (ii) all risks of loss or damage in transit shall be borne by the Customer after delivery to the carrier; and (iii) all costs of shipping shall be borne by Customer. (b) **Other Terms:** (i) Any additional expense arising from the use of a method or route of shipment requested by Customer shall be borne entirely by Customer. Seller reserves the right to make delivery in installments, unless otherwise agreed in writing by Seller; all such installments are to be separately invoiced and paid for when due per invoice or other instructions from Seller, without regard to subsequent deliveries, and any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Delay in delivery of any installment shall not relieve Customer of its obligations to accept remaining deliveries. In any case, Customer shall bear all costs of any special packaging or containers requested by Customer, or otherwise deemed necessary in Seller's opinion, in connection with shipping. Seller may, at any time, require any or all costs of shipping for which Customer is responsible under the terms hereof to be prepaid by Customer. (ii) Claims for shortages or other errors in delivery must be made in writing to Seller within 5 days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Customer. Claims for loss or damage to goods in transit, after risk of loss has passed to Customer, shall be made to the carrier and not to Seller. (iii) All delivery dates are approximate. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of the Customer, embargo, war, act or threat of terrorism, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials or manufacturing facilities or, without limiting the foregoing, any other event beyond the Seller's control. In the event of any such delay, the date of delivery shall be extended for a period equal to the length of the delay. Customer's exclusive remedy for other delays and for Seller's inability to deliver for any reason, including Customer's inability to produce goods which meet the requirements of this contract, shall be cancellation of this agreement and a refund of the purchase price, if any, already paid for any undelivered goods and any corresponding prepaid transportation costs not otherwise recoverable by Customer from the shipper.

7. **Security Interest.** This Agreement shall be considered a security agreement to the maximum extent allowed by law. Customer hereby grants to Seller, and Seller shall have, retain, and possess, a valid and perfected security interest in the Goods and proceeds thereof, free of all liens, claims and rights of other parties, until Seller is paid in full. Customer hereby irrevocably grants to Seller a power of attorney to complete, sign on Customer's behalf, and file all forms reasonably necessary to perfect Seller's security interest. Customer further agrees, upon Seller's request, to deliver to Seller any financing statement and other documents and take such actions as Seller may consider necessary in order to establish and maintain Seller's aforementioned valid and perfected security interest. If Customer defaults, or Seller deems itself insecure of receiving payment, the full unpaid balance shall become immediately due and payable at the option of the Seller, and Seller may retake possession of the Goods without court order. Customer agrees that Customer

will not, directly or indirectly, sell, assign, convey, give away, or otherwise create any security interest in the Goods or other rights provided under this Agreement without Seller's prior written consent.

8. **GOODS DESCRIPTIONS AND LITERATURE.** Any description of the Goods, whether made in writing or orally by Seller or Seller's agents, or in specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, catalogues, product brochures, photographs and other illustrations or similar materials used in connection with Customer's order, are for the sole purpose of identifying the Goods and shall not be construed as an express warranty and shall not form part of the terms of the transaction between Seller and Customer. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the Goods shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

9. **CHANGES.** Seller may at any time make such changes in design and construction of Goods as Seller deems appropriate, without notice to Customer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

10. **NO WARRANTY, GUARANTY OR INDEMNITY.** Goods are warranted by Seller directly to the purchaser (*i.e.*, the end user) **AND ARE SOLD BY SELLER TO CUSTOMER WITHOUT ANY WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.** Seller provides no guaranty or indemnity of any kind whatsoever with respect to the Goods.

11. **NO RETURNS.** Due to the nature of the Goods, living grafted plants, Customer shall not return any Goods without prior written consent of Seller. Seller may however, at its sole discretion, make arrangements for the return or replacement of Goods.

12. **EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY; CUSTOMER'S INDEMNITY.** With respect to any and all breaches of this contract, Seller's liability shall in no event exceed the contract price.

SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO GOODS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, (3) ANY OBLIGATIONS OR LIABILITIES ARISING OUT OF OR RELATED TO SEED BORNE DISEASES, AND (4) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of Goods or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slowdown costs, spoilage of material, or for any other types of economic loss. All the limitations and disclaimers contained in this Paragraph and in the rest of this contract shall apply to claims of Customer's customers or any third party asserted by Customer against Seller for indemnity or contribution, as well as direct claims of Customer against Seller. Customer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) that Seller may incur as a result of any claim by Customer or others arising out of or in connection with Customer's use of the Goods and/or related products or services sold hereunder and based on Goods or product or service defects not proven to have been caused solely by Seller's negligence.

13. **SEED-BORNE DISEASE.** As a precondition of validating any purchase orders, Customer shall deliver to Seller a fully executed Notice of Waiver and Indemnification Regarding Seed Borne Disease ("Notice of Waiver"). Customer shall execute and deliver a new Notice of Waiver annually, or at other times as directed by Seller. No purchases orders shall be valid until Seller receives said executed Notice of Waiver.

14. **SEVERABILITY.** If any provisions of these terms and conditions of sale shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provision hereof, which shall be construed as if such illegal and unenforceable provision(s) had not been inserted herein.