

Tri-Hishtil, LLC

CUSTOMER AGREEMENT AND TERMS AND CONDITIONS OF SALE

1. Applicability. This Agreement shall govern all goods and/or services provided by Tri-Hishtil (the "Products") from the date of signature until superseded by a subsequent written agreement. No provision of this Agreement may be waived or modified in any way, except as expressly agreed in a writing approved by Tri-Hishtil management. No other Tri-Hishtil employee or agent is authorized to waive, alter, or exceed the terms of this Agreement in any way.
2. Orders. Orders for Products (each an "Order") shall be submitted to Tri-Hishtil via e-mail or in hardcopy. Each Order shall specify (i) Product varieties (scion and rootstock, as applicable) and quantities; (ii) requested ready date; and (iii) means of shipment/shipment point. All Orders are subject to acceptance by Tri-Hishtil, which may be withheld by Tri-Hishtil for any reason. Tri-Hishtil shall have no obligation to fulfill any Order not expressly accepted in writing.

No order may be canceled or altered except (i) as provided under Section 4 of this Agreement, or (ii) upon terms and conditions acceptable to Tri-Hishtil as evidenced by Tri-Hishtil's written consent. In no event will the initial deposit be refunded, as the deposit covers Tri-Hishtil's input costs for fulfilling the Order.

3. Pricing, Payment & Deposit. All prices are payable as quoted, and are exclusive of sales and any other applicable tax, which will be borne by the Customer.

Each Order is subject to full payment due 10 calendar days after Order confirmation, but for customers with established credit terms. For customers with established credit terms, unless further credit is granted in writing by Tri-Hishtil, a downpayment of 40% of the invoice total is due 10 calendar days after confirmation, with the remaining 60% plus freight charges due 30 calendar days after receipt of each Order. Late payments are subject to a service charge equal to the lower of: (a) 1.5% per month (18% per annum), or (b) the highest rate permitted by applicable law.

If Tri-Hishtil determines, in its sole discretion at any time, that Customer's financial condition is unsatisfactory Tri-Hishtil may require payment in advance or by irrevocable letter of credit in form and substance satisfactory to Tri-Hishtil, and may defer shipment or cancel any Order if the Customer does not promptly provide such payment or a letter of credit.

4. Production Dates. Tri-Hishtil shall make all commercially reasonable efforts to make the Products ready for delivery by the date specified in a confirmed Order. Tri-Hishtil shall provide prompt notice upon determination that Tri-Hishtil will be unable to meet this date. If the delay is reasonably expected to exceed thirty (30) days, Customer will (except in cases of force majeure, as provided under Section 11) have the right to rescind and receive a full refund of the deposit and any other payments made to Tri-Hishtil; *except that*, no refund will be issued in the event that a crop failure or delay arises as a result of substandard Customer-supplied seeds or other Customer-supplied input materials. TRI-HISHTIL SHALL NOT INCUR ANY LIABILITY FOR FAILURE TO MEET THE TARGET AVAILABILITY DATE EXCEPT AS PROVIDED IN THIS SECTION.
5. Delivery. Unless otherwise stated in a confirmed Order or as stated elsewhere in this Agreement, all Products are delivered F.O.B. Tri-Hishtil's facility in North Carolina. In the event that shipping is specified in accepted Order, the Customer is responsible for arranging and paying for shipment. Tri-Hishtil may arrange for shipment on the Customer's behalf, but the Customer acknowledges that Tri-Hishtil works exclusively with third-party carriers. As such, any and all claims for damages incurred during shipment shall be brought only against the carrier, and the Customer irrevocably waives any

and all claims for damages incurred during shipment as against Tri-Hishtil.

6. Inspection on Delivery. Customer will promptly inspect the Products upon pickup or delivery. Claims for shortages or other errors in delivery must be made in writing to within five (5) days of delivery. If Customer does not provide such notice, the Products and their quantities shall be deemed irrevocably accepted.
7. Security Interest. Title to Products transfers to the Customer upon full payment for an Order. In the event that an Order utilizes Customer-provided seeds or other materials, title to these materials shall transfer to Tri-Hishtil upon planting or other use in the production process. Customer hereby grants to Tri-Hishtil a security interest in all Products, free of all liens, claims and rights of other parties, until Tri-Hishtil is paid in full, and irrevocably grants to Tri-Hishtil a power of attorney to complete, sign on Customer's behalf, and file all forms reasonably necessary to perfect this security interest. Customer further agrees, upon Tri-Hishtil's request, to deliver to Tri-Hishtil any financing statement and other documents and take such actions as Tri-Hishtil may consider necessary in order to establish and maintain this security interest. If Customer defaults, or Tri-Hishtil deems itself insecure of receiving payment, the full unpaid balance shall become immediately due and payable at the option of Tri-Hishtil, and Tri-Hishtil may retake possession of the Goods without court order. Customer agrees that it will not, directly or indirectly, sell, assign, convey, give away, or otherwise create any security interest in the Products without Tri-Hishtil's prior written consent.
8. Limited Warranty. Tri-Hishtil warrants that the Products (i) will be composed of the scion and rootstock specified in a confirmed Order, and (ii) will be generally free of visible defects or disease at the time of pickup or delivery to a freight carrier. TRI-HISHTIL MAKES NO OTHER WARRANTY WITH RESPECT TO THE PRODUCTS, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES AS TO THE QUALITY, PURITY, GENETIC STABILITY, PRODUCTIVENESS, FREEDOM FROM ANY DISEASE OR PATHOGEN, OR OTHER LATENT DEFECT. Subject only to the express warranties set forth in this paragraph, due to the Products' perishability and susceptibility to latent defect or disease all Products are sold as-is and with all faults.
9. Waiver re: Seedborne Disease. Tri-Hishtil utilizes customer-provided seed or sources from third-party seed vendors, at the customer's discretion, for its production of scions and rootstock. While seed suppliers routinely sample their products for seedborne diseases such as bacterial fruit blotch (*Acidovorax avenae* subsp. *Citrulli*), gummy stem blight (*Didymella bryoniae*), cucumber green mottle mosaic virus, anthracnose (*Colletotrichum lagenarium*), clavibacter (*Clavibacter michiganensis*), and tomato brown rugose fruit virus, no testing protocol can entirely eliminate the risk of seedborne diseases. TRI-HISHTIL CANNOT AND DOES NOT WARRANT THAT THE PRODUCTS WILL BE FREE OF SEEDBORNE DISEASE. CUSTOMER EXPRESSLY WAIVES ANY CLAIMS FOR DAMAGES RESULTING FROM SEEDBORNE DISEASES INCLUDING BUT NOT LIMITED TO THOSE DISEASES LISTED IN THIS PARAGRAPH. Without limitation of the preceding provisions, Tri-Hishtil may *in its sole discretion* offer a refund of the purchase price for Products affected by seedborne disease, less the initial deposit.
10. Limitation of Liability and Remedies. TRI-HISHTIL SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ECONOMIC LOSS, LOST PROFITS, GROWING COSTS, AND OTHER SERVICES AND EXPENSES RELATING TO THE PRODUCTS PROVIDED, HOWEVER CAUSED, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. TRI-HISHTIL'S TOTAL LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE TOTAL INVOICED AMOUNT. BOTH PARTIES TO THIS AGREEMENT UNDERSTAND AND ACKNOWLEDGE THAT THIS LIMITATION IS A REASONABLE AND ESSENTIAL ALLOCATION OF THE RISKS INHERENT IN PURCHASE AND SALE OF LIVING PLANTSTOCK.

11. **FORCE MAJEURE.** Any failure or delay in the performance by any party to this Agreement of its obligations hereunder shall not be a breach of this Agreement if such failure or delay arises out of or results from any cause beyond such party's reasonable control, including any fire, frost, drought, pandemic, casualty, delay in third-party transportation, breakdown or accident, or action taken in compliance with any law, regulation, or order of any governmental body.
12. **DISPUTES, JURISDICTION AND VENUE.** This Agreement is governed by the laws of North Carolina, excluding its conflicts of law rules. Both parties irrevocably submit to the exclusive jurisdiction of and venue in the state courts of North Carolina for any dispute arising out of this Agreement and any Order placed hereunder, and waive to the fullest extent allowed by law all objections to such jurisdiction and venue.
13. **GENERAL.** This Agreement constitutes the complete and final agreement of the parties and supersedes any prior agreements, understandings or discussions relating to the subject matter hereof. A party does not waive any right under this Agreement by failing to insist on compliance with any of the terms of this Agreement or by failing to exercise any right hereunder. Neither party may assign its rights or obligations hereunder without the written consent of the other. If any portion of this Agreement is deemed to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect to the fullest extent permissible by law. This Agreement may be executed by electronically and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument. The section headings of this Agreement are for convenience only and have no interpretive value.

THIS IS A CONTRACT. DISCLAIMERS OF WARRANTIES, LIMITATIONS OF LIABILITY AND OTHER IMPORTANT PROVISIONS ARE AN INTEGRAL PART OF THIS CONTRACT. BY SIGNING BELOW, YOU INDICATE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

EXECUTED AND AGREED TO BY:

Customer Name: _____

Signed: _____ *Dated:* _____

Print Name: _____

Title: _____