

Terms And Conditions of Sale

Acceptance of Terms

These terms and conditions shall govern orders for seeds, bulbs, plants, supplies and other materials ("merchandise") placed with seller. All negotiations with sales representatives or other agents of sellers are merged herein. No modification of these terms and conditions shall be effective unless in writing signed by Seller. Placement of the order shall constitute Purchaser's acceptance of these terms and conditions. All orders are subject to acceptance by Seller at our offices in Miami, Florida.

Limitation of Warranty

Seller warrants, to the extent required by law, that merchandise conforms to the description appearing in Seller's catalog and on container labels, within recognized tolerances. SELLER MAKES NO OTHER OR FURTHER WARRANTY, EXPRESS OR IMPLIED. ALL ORDER OR FURTHER WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

Certain merchandise may be separately or warranted by the manufacturer. Seller does not adopt or ratify any manufacturer warranties, express or implied, and Seller shall have no liability thereunder. Seller does not adopt or ratify any manufacturer warranties, express or implied, made by Purchaser upon resale of the merchandise, and seller shall have no liability thereunder.

Limitation of Remedy

PURCHASER'S SOLE AND EXCLUSIVE REMEDY SHALL BE REFUND OF THE PURCHASE PRICE. SELLER'S LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PRODUCTS LIABILITY OR ANY OTHER THEORY OF LIABILITY, IS LIMITED TO THE AMOUNT OF THE PURCHASE PRICE. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

Mandatory Arbitration

ANY CLAIM WHICH PURCHASER MAY HAVE AGAINST SELLER ARISING OUT OF OR RELATING TO THE SALE OF THE MERCHANDISE SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, SAID ARBITRATION TO BE VENUED IN DADE COUNTY, FLORIDA. The laws of several states require arbitration, conciliation or mediation of disputes involving allegedly defective seed before legal action may be taken. Purchasers should contact the State/Country Department of Agriculture for information. Such laws typically require that a complaint be filed with the State Department at Agriculture in time to permit inspection of the seeds, crops or plants. If such a complaint is filed, a copy must be sent to Seller by registered or certified mail.

Governing Law, Jurisdiction and Venue

The laws of the State of Florida including but not limited to the Uniform Commercial Code as adopted therein, shall govern all matters arising out of or relating to Seller's sale of merchandise. ANY DISPUTE NOT SUBJECT TO ARBITRATION AND ANY ACTION TO ENFORCE AN ARBITRATION AWARD ARISING OUT OF OR RELATING TO THE SALE OF MERCHANDISE HEREUNDER SHALL BE MAINTAINED IN THE STATE OR FEDERAL COURTS LOCATED IN DADE COUNTY, FLORIDA, AND PURCHASER SUBMITS TO THE JURISDICTION OF AND VENUE IN SAID COURTS.

Indemnity

By accepting merchandise Purchaser agrees to defend Seller, to hold it harmless and indemnify it from and against any claim or loss asserted by any or all transferees of such merchandise or users of loss asserted by any or all transferees of such merchandise or users

of the products of such merchandise who are not notified by Purchaser in writing of limitation of warranty. limitation of remedy, arbitration, governing law jurisdiction and venue, and notice regarding seed, borne diseases in language substantially equivalent to that contained in these terms and conditions of sale.

Prices

All prices are subject to change without notice. The price in effect at time of shipment will prevail. Prices do not include installation: Seller takes no responsibility and shall have no liability for installation.

Payment

Payment is due in accordance with terms specified on invoice. All payments shall be made in U.S. funds. In the event of default in the payment of any amount when due, and in addition to all other rights and remedies available to Seller, SELLER SHALL BE ENTITLED TO COLLECT A LATE CHARGE OF 2% PER MONTH (24% PER YEAR) OR THE MAXIMUM RATE ALLOWED BY LAW, WHICHEVER IS LESS, ON ALL AMOUNTS PAST DUE FROM THE DATE DUE UNTIL THE DATE PAID. A FEE OF \$25.00 WILL BE CHARGED FOR ANY RETURNED CHECK OR DECLINED BANK CARD TRANSACTION.

Inspection, Notice and Return

Purchasers should inspect merchandise upon receipt, Seller shall have no liability for any defect unless notice is given promptly, not to exceed thirty (30) days after such defect is or should have been discovered. In cases of loss or damage due to transportation, Purchaser should obtain and forward an inspection report to Seller's Traffic Department Within fifteen (15) days of delivery. No merchandise may be returned without Seller's prior authorization. Requests to return merchandise must be made within ten (10) days after delivery. All returns must be in accordance with Seller's shipping instructions with freight paid by Purchaser.

All requests for return of merchandise must be made to Ball/SB at 1+(305) 471 6191. The Purchaser will also be asked to provide a letter stating the reason for the return. The order number or invoice number must accompany the return in order to expedite the credit. No seed will be accepted without prior notification to Ball/SB L.C. Seed must be returned in the original condition within thirty (30) days of the ship date for full credit. No open packages will be accepted. If seed is resubmitted within thirty-one (31) to sixty (60) days after ship date, full credit will be given but a 15% restocking charge will be assessed. No credit or replacement will be given for seed returned after sixty-one (61) days from our ship date because genesis and power seed is perishable and has a short shelf life, no returns will be accepted.

Delays, Shortages and Substitutions

Seller shall not be responsible for delays in delivery or for losses resulting from such delays. Seller reserves the right to make partial shipments. In the event of shortages, Seller may substitute such other similar merchandise as is available.

Protected Varieties

Varieties listed with the symbols #, PP# (Plant Patent Number), USPP or PAF (U.S. Patent, Pending) PVPA (Plant Variety Protection Act Pending Certificate issued) or PVP/AV (Plant Variety Protection Act Pending), BR (Breeder's Rights Certificate issued) or BRP (Breeder's Rights Protection Pending) are protected by U.S. or foreign plant patents or plant variety protection laws. These varieties may not be reproduced without authorization. The breeder (or authorized representative) has the right to inspect customer's nurseries during normal business hours to assess compliance with the restrictions on use of protected varieties.

Notice Regarding Seed Borne Diseases

Seller makes no representation regarding the freedom from seed borne diseases of the seed sold and disclaims any liability relating to such diseases, whether previously known to exist or not identified until this seed is grown.