



## WATERMELON WAIVER FORMS

Stokes Seeds and its suppliers require a signed waiver on watermelon seed orders. Please follow the instructions below to ensure the process is completed correctly.

### Instructions:

1. Read all information contained in these documents carefully.
2. Please feel free to consult a lawyer before signing.
3. Ensure you have filled out and signed the required fields on **ALL** documents.
4. Make a copy of the signed forms to keep for your personal records.
5. Send **ONE** signed copy of all documents **including supplier waiver (if applicable)** to Stokes Seeds using one of the following methods:

**Email:** stokes@StokeSeeds.com

**Fax:** 1-800-272-5560

**CDN Post:** Stokes Seeds Ltd.  
PO Box 10  
296 Collier Rd. S.  
Thorold, ON  
L2V 5E9

**US Post:** Stokes Seeds Inc.  
PO Box 548  
Buffalo, NY  
14240-0548

If you have any questions or require clarification on the attached forms **please contact our Sales Department** at 1-800-263-7233.



NOTICE, WAIVER AND COMPLETE RELEASE AGREEMENT, INCLUDING
LIMITATION OF WARRANTY AND LIMITATION OF LIABILITY (GROWER)
NOT RECOMMENDED FOR PLANTING IN SOUTH CAROLINA

Watermelon Fruit Blotch (WFB), caused by Acidovorax avenae subsp. citrulli, and Gummy Stem Blight (GSB), caused by the fungus Didymella
Byroniae are serious diseases which have become a significant risk factor in many areas where watermelons are grown. The pathogens causing WFB
and GSB can be introduced into a field by infested seed, infected transplants, volunteer watermelon, mechanical means, or natural spread from alternate
hosts.

- 1. GROWER'S RELEASE OF ALL LIABILITY FOR WATERMELON FRUIT BLOTCH (WFB) AND GUMMY STEM BLIGHT (GSB).
2. GROWER'S AGREEMENT NOT TO RESELL SEEDS OR PLANTS.
3. GROWER'S INDEMNIFICATION AGREEMENT.
4. GROWER UNDERSTANDS THIS AGREEMENT.
5. ALL OTHER TERMS OF THE STOKES SEEDS LABEL APPLY.
6. CHOICE OF LAW AND CHOICE OF FORUM.
7. ATTORNEY'S FEES.

I have read and understand this release agreement
and I agree to be bound by all of its terms.

GROWER SIGNATURE
NAME
ADDRESS
CITY STATE ZIP CODE
TELEPHONE
DATE

Stokes Seeds
PER: STOKES SEEDS AUTHORIZED SIGNATURE
DATE:
FOR OFFICE USE ONLY
STATE ORDER NUMBER

IN U.S.A
P.O. Box 548
Buffalo NY 14240-0548
800-263-7233
IN CANADA
P.O. Box 10
Thorold ON L2V 5E9
800-263-7233

Table with 4 columns: STOKES SEEDS VARIETY REQUESTED, QTY/LBS, STOKES SEEDS VARIETY REQUESTED, QTY/LBS. Rows 1-4.

**AGREEMENT OF ADDITIONAL TERMS AND CONDITIONS OF SALE  
FOR WATERMELON AND MELON SEEDS/PLANTS SOLD OR TRANSFERRED BY  
NUNHEMS USA, INC.**

**NOTICE: Read this entire Agreement before signing. If the terms are not acceptable, do not sign this Agreement. If you do not understand any of the terms of this Agreement, consult an attorney.**

\_\_\_\_\_ (“Buyer”) wishes to purchase and Nunhems USA, Inc., doing business as Bayer CropScience Vegetable Seeds (“BCS BV”), its distributors or dealers (collectively the “Sellers”) are willing to sell/provide BCS BV watermelon and/or melon seeds and/or plants grown from those seeds (hereinafter referred to as “BCS VS Watermelon/Melon Seed Products”) under the terms and conditions outlined in this Agreement of Additional Terms and Conditions of Sale (“Agreement”) during the period October 1, 2014 to September 30, 2016 (“the Sales Period.”). Therefore, Buyer and Sellers agree, for good and valuable consideration, including, but not limited to, the sale price of the BCS VS Watermelon/Melon Seed Products and such Products themselves, that the following terms and conditions of sale shall govern every purchase/acquisition of BCS VS Watermelon/Melon Seed Products by Buyer during the Sales Period:

**1. LIMITATIONS ON RE-SALE OR TRANSFER**

**1.1 Prohibited Sales:** Buyer agrees that the following types of sales or transfers of BCS VS Watermelon/Melon Seed Products are prohibited (“Prohibited Sales”): sales or transfers are prohibited to any person who has not signed an Agreement of Additional Terms and Conditions of Sale for the current Sales Period (section 1.3).

BUYER AGREES THAT IT WILL INDEMNIFY, DEFEND AND HOLD SELLERS HARMLESS FROM ANY AND ALL CLAIMS ARISING FROM PROHIBITED SALES OF BCS VS WATERMELON/MELON SEED PRODUCTS, WHETHER THE LEGAL THEORY FORMING THE BASIS OF SUCH CLAIM INVOLVES CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

**1.2 Authorized Sales or Transfers:** The following types of re-sale or transfer of BCS VS Watermelon/Melon Seed Products are authorized (“Authorized Sales”):

Sales and transfers are authorized: (i) to a Grower who has signed an Agreement of Additional Terms and Conditions of Sale for the current Sales Period (section 1.3) or (ii) to another party who has signed an Agreement of Additional Terms and Conditions of Sale for the current Sales Period (section 1.3).

**1.3 Buyer’s Duty to Notify of Terms and Conditions of Sale Prior to Authorized Sale or Transfer:** **PRIOR** to any Authorized Sale, transfer or donation of Watermelon/Melon Seed Products, Buyer agrees to notify any person receiving BCS VS Watermelon/Melon Seed Products of the terms and conditions of sale in this Agreement by requiring such person to sign an Agreement of Additional Terms and Conditions of Sale (for Watermelon and Melon Seeds & Plants Sold or Transferred by BCS VS). Buyer agrees to obtain a copy of the signed Agreement of Additional Terms and Conditions of Sale **PRIOR** to purchase by and/or delivery of BCS VS Watermelon/Melon Seed Products to any person. Executed Agreements of Additional Terms and Conditions of Sale shall be sent to BCS VS via U.S. mail or nationally recognized courier service at the address below no later

than ten (10) working days after delivery or shipment of seed. Blank copies of the Agreement of Additional Terms and Conditions of Sale can be obtained upon request from BCS VS, 1200 Anderson Corner Road, Parma, ID 83660.

**2. RISK OF NONPERFORMANCE UNDER FIELD CONDITIONS:**

**2.1 Risk of Nonperformance:** Failure of seed to germinate and/or yield and quality reduction may occur as a result of environmental factors specific to this seed including, without limitation, cold temperatures, heat, excess moisture, drought, wind and hail, disease, pests, inadequate fertility, misapplication of pesticides, planting date, planting location, soil type, irrigation practices, insects, disease and weed pressures and other acts of God. All such risks of nonperformance and/or reduced performance shall be assumed by the Buyer and User.

**2.2 Bacterial Fruit Blotch on Watermelon and Melon Notice:** Bacterial Fruit Blotch (BFB) on watermelon and melon, *Acidovorax avenae* subsp. *citrulli*, is a serious disease that has become a significant risk in the area of watermelon and melon cultivation. The pathogen causing BFB can be introduced into a field by infected seed, infected transplants, volunteer cucurbits, and mechanical means or naturally spread from alternate hosts. Experts in research do not fully understand how to insure that seed is completely free of BFB. They cannot treat seed to completely eliminate BFB. While it is impossible to conduct any testing procedures which will give 100% reliable results with regard to the identification of any seed borne BFB infection, BCS VS is using its best efforts to test all of its watermelon and melon seed lots. Consequently, BCS VS will have tested the number of seedlings from each lot pursuant to the industry approved standards, and found no symptoms of BFB to be present within the known limits of detection. However, BCS VS does not assume any responsibility for the occurrence of same from planting seed, transplants or on the fruit produced.

**2.3 Gummy Stem Blight Notice:** Gummy Stem Blight (GSB) is caused by the fungus, *Didymella bryoniae*, which attacks watermelons, melons and other cucurbits. Yield loss due to GSB occurs as a result of rapid defoliation of vines, fruit infection and subsequent decay. GSB has become a significant risk in the area of watermelon and melon production. The pathogen causing GSB can be introduced into a field by infected seed, infected transplants, volunteer cucurbits, and mechanical means or naturally spread from alternate hosts and is present in the environment in many growing areas. Experts in research do not fully understand how to insure that seed is completely free of GSB. They cannot treat seed to completely eliminate STB. While it is impossible to conduct any testing procedures which will give 100% reliable results with regard to the identification of any seed borne GSB infection, BCS VS is using its best efforts to test and/or treat all of its watermelon and melon seed lots. Consequently, all watermelon or melon seed lots sold have been tested or treated for the eradication of GSB, pursuant to current industry standards. However, BCS VS does not assume any responsibility for the occurrence of same from planting seed, transplants or on the fruit produced.

**2.4 Cucumber Green Mottle Mosaic Virus:** (CGMMV) is caused by a virus which attacks watermelons, melons, and other cucurbits. Early symptoms consist of vein clearing and crumpling of leaves. CGMMV has become a significant risk in the area of watermelon and melon field productions and especially greenhouse grown crop. The pathogen causing CGMMV can be introduced into a field or greenhouse by infected seed, infected transplants, volunteer cucurbits and mechanical means or naturally spread from alternate hosts, water, tools, and is present in the environment in many growing areas. Experts in research do not fully understand

how to insure that seed is completely free of CGMMV. While it is impossible to conduct any testing procedures which will give 100% reliable results with regard to the identification of any seed borne CGMMV infection, BCS VS is using its best efforts to test and/or treat all of its watermelon and melon seed lots. Consequently, all watermelon or melon seed lots sold have been tested or treated for the eradication of CGMMV, pursuant to current industry standards. However, BCS VS does not assume any responsibility for the occurrence of same from planting seed, transplants or on the fruit produced.

**2.5 Assumption of Risks:** BCS VS and Buyer and User acknowledge that this sale/transfer of BCS VS Watermelon/Melon Seed Products is a commercial transaction. Therefore, as a condition of sale of all BCS VS Watermelon/Melon Seed Products, Buyer and User acknowledge that it has been informed of the risk of non performance and the risks associated with the potential presence of BFB, GSB, and CGMMV, and hereby waive any right to assert any claim against Sellers whether for breach of contract, tort, negligence or otherwise. Buyer and User also release Sellers from any and all claims relating to BFB, GSB, and CGMMV with respect to all BCS VS Watermelon and Melon Seed. Furthermore, Buyer and User expressly acknowledge that its exclusive and sole remedy against Sellers for any loss resulting from the use or sale of the seed is limited to return of the purchase price of said seed. Additionally, if any seed is repackaged, all remedies against Sellers will be waived, including return of the purchase price, and Sellers will have no liability whatsoever to any other party.

As a further condition of sale for watermelon seed, the Buyer and User agree that any seed or plants purchased from BCS VS will be produced or grown in accordance with "Guidelines for Control of Bacterial Fruit Blotch in Watermelon" as published by the National Watermelon Association, Inc., August 1996, including any subsequent amendments.

### **3. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY**

**3.1 Exclusive Express Warranty:** BCS VS hereby states, as its sole and exclusive warranty that BCS VS Watermelon/Melon Seed Products conform to label descriptions that are required by State and Federal law when shipped from or delivered at BCS VS' shipping facility.

**BCS VS MAKES NO OTHER EXPRESS WARRANTY.**

**3.2 Disclaimer of Warranty:** BCS VS DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT PERMITTED BY STATE AND FEDERAL SEED LAW, ALL BCS VS WATERMELON/MELON SEED PRODUCTS ARE SOLD AS IS.

**3.3 Exclusive Remedy:** BUYER'S AND USER'S EXCLUSIVE REMEDY AND BCS VS SOLE LIABILITY FOR LOSS OR DAMAGE ARISING FROM PURCHASE OR USE OF BCS VS WATERMELON/MELON SEED PRODUCTS SHALL BE AN AMOUNT EQUAL TO THE PRICE PAID, IF ANY, FOR THE SEED PRODUCTS USED.

**3.4 Limitation of Liability:** BUYER OR USER MAY NOT RECOVER ANY AMOUNT FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFIT, LOSS OF YIELD AND AMOUNTS EXPENDED IN USING OR GROWING SUCH SEED PRODUCTS, OR FOR HARVESTING THE PRODUCE OF SUCH SEED PRODUCTS. THIS

**LIMITATION OF LIABILITY SHALL BE APPLICABLE TO ANY CLAIM PRESENTED TO BCS VS WHETHER THE LEGAL THEORY FORMING THE BASIS OF SUCH CLAIM INVOLVES CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.**

**Buyer and User agree that if BCS VS refunds an amount equal to the price Buyer or User paid, if any, for BCS VS Watermelon/Melon Seed Products, this limitation of liability will not have failed of its essential purpose.**

**3.5 Prompt Notice of Claim:** BCS VS must have prompt notice of any claim arising from the use of BCS VS Watermelon/Melon Seed Products so that an immediate inspection of the allegedly affected seed and/or crop can be made. Buyer or User shall notify BCS VS immediately, but in no case later than seven (7) days after any defect or other basis of such claim is discovered or should have been discovered. Any claims made for which BCS VS did not receive notice within seven (7) days shall be barred.

**3.6 Statute of Limitation:** Any action against BCS VS for breach of contract and any claim for breach of warranties must be commenced within one (1) year after the cause of action accrues. All actions shall be barred after such time.

**4. RELEASE AND INDEMNITY:** With respect to all BCS VS Watermelon/Melon Seed Products purchased by Buyer, Buyer agrees to assume the risk and take the sole responsibility that such seed and plants may fail to perform as expected including, but not limited to, failure to size or yield as expected or that such seed and plants may be infected with disease including, without limitation, the bacteria that causes BFB, the fungus that causes GSB, or the virus that causes CGMMV. Buyer releases, indemnifies and agrees to defend and hold Sellers harmless from any and all claims of whatever kind or nature arising from such non-performance or disease, but Buyer's obligation to indemnify, defend and hold Sellers harmless shall not include a claim for breach of the express warranty of this Agreement of Additional Terms and Conditions of Sale. Buyer's obligation to indemnify, defend and hold BCS VS harmless for any claims based upon or arising out of the above shall continue even if Buyer transfers such seed or plants grown from such seed. Buyer's obligation to indemnify, defend and hold Sellers harmless shall include, but not be limited to, reasonable attorneys' fees and costs incurred by BCS VS.

By executing an Agreement of Additional Terms and Conditions of Sale prior to an Authorized Sale, any person receiving BCS VS Watermelon/Melon Seed Products pursuant to an Authorized Sale thereby agrees to indemnify and hold Sellers harmless for such non-performance.

Notwithstanding the indemnity provisions of this Agreement, in the event Buyer is named by a subsequent buyer or transferee as a defendant in a legal action based upon seed performance pertaining to BCS VS Watermelon/Melon Seed Products sold to Buyer pursuant to this Agreement, provided that Buyer obtained a validly executed Agreement of Additional Terms and Conditions of Sale **PRIOR** to an Authorized Sale, and provided Buyer did not tamper with the seeds in any way or take any actions that would result in any independent liability, and did not make any representations as to the seed that vary in any way from BCS VS' labels and published sales materials, BCS VS shall indemnify, defend and hold Buyer harmless from any such claims.

**5. NOTICE OF REQUIRED ARBITRATION, CONCILIATION, MEDIATION:** 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 that this notice relates to to produce as represented. BUYER SHOULD CONSULT ITS 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 laws of BUYER'S State.

**6. CHOICE OF LAW AND CHOICE OF FORUM:** The parties agree that this Agreement shall be construed in accordance with the laws of the State of Idaho. If local or State law requires alternative dispute resolution (such as arbitration, conciliation or mediation) then the parties shall comply with such requirements. It is further agreed that any litigation by and between Buyer and BCS VS or any authorized BCS VS distributor/dealer, relating to the sale or acceptance of all such BCS VS Watermelon/Melon Seed Products hereunder, shall take place in Ada County, Idaho, USA.

**7. ATTORNEYS' FEES:** In the event that BCS VS or its distributor/dealer enforces any terms of this Agreement in any litigation with Buyer, BCS VS or the distributor/dealer shall be entitled to recover reasonable attorney's fees from Buyer.

**8. GENERAL PROVISIONS:**

**8.1 Entire Agreement:** This Agreement is the entire agreement as to the terms and conditions of sale between Seller and Buyer with the exception of the price, amount and variety of seed and delivery dates for particular orders during the Sales Period which will be agreed to for each of those respective orders. Buyer and User agree that it is not relying on any statement, agreement, writing, warranty or representation, other than those contained in this Agreement.

**8.2 No Amendment:** This Agreement may not be amended in any way except in writing by an officer of BCS VS.

**8.3 Facsimiles:** The parties agree that facsimile transmission of any signed original Agreement and/or re-transmission shall be same as delivery of an original.

**8.4 Severability:** If any term of this Agreement is held to be unenforceable, all remaining terms of this Agreement shall remain in effect and shall be fully enforceable.

**9. SALE OR USE IN MEXICO:** In addition to the terms and conditions set forth above, if BCS VS Watermelon/Melon Seed Products are sold or used in Mexico, BCS VS certifies that BCS VS has complied with the requirements of Articles 8, 9 and 10 of Mexico's Law Governing the Production, Certification, and Sale of Seeds and Articles 13, 20, and 21 of the Regulations implementing such law.

**10. INTERNATIONAL SALES OR USE:** For all sales of BCS VS Watermelon/Melon Seed Products between parties of different countries, the United Nations Convention on Contracts shall not apply. In such case International Seed Federation (ISF) Rules and Usages for the Trade in Seeds for Sowing Purposes shall apply except as specified in this Agreement or in related Sales Orders or Sales Invoices.

**THE UNDERSIGNED ACKNOWLEDGES THAT HE/SHE HAS READ AND UNDERSTANDS EACH OF THE TERMS OF THIS AGREEMENT OF ADDITIONAL TERMS AND CONDITIONS OF SALE; THAT HE/SHE UNDERSTANDS THAT BCS VS HAS RECOMMENDED THAT BUYER CONSULT WITH AN ATTORNEY TO ANSWER ANY QUESTIONS BUYER MAY HAVE REGARDING THIS AGREEMENT; AND THAT HE/SHE HAS AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF \_\_\_\_\_ (BUYER).**

BUYER: \_\_\_\_\_  
(Print Company Name)

Nunhems USA, Inc. Dealer or Distributor

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Company Name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Title: \_\_\_\_\_

City : \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Date: \_\_\_\_\_

Phone #: \_\_\_\_\_

SELLER or ACCEPTED BY:

NUNHEMS USA, INC.

By: \_\_\_\_\_ (Signature)

Date Signed: \_\_\_\_\_

Title: \_\_\_\_\_

102314



NOTICE OF ALL BUYERS AND SPECIAL LIMITATIONS OF WARRANTY:  
TRIPLOID HYBRID WATERMELON SEED

AGREEMENT OF SALE

- A. NOTICE: Triploid hybrid watermelons are sterile hybrids which characteristically produce fruits with few or no true seeds. Because the absence or relative absence of hard or true seeds in the flesh of the melon is its chief distinguishing characteristic, the triploid hybrid watermelon is often referred to as a "seedless" watermelon. Despite this popular perception, triploid watermelons often contain small, vestigial seeds. In addition, certain genetic, cultural and climatic factors are known to cause the formation of empty seed coats (small, white, immature seeds) and/or hard seeds in the flesh of the melons. Due to the wide variety of possible causes of hard seed formation, TRIPLOID HYBRID WATERMELONS ARE NOT GUARANTEED TO PRODUCE SEEDLESS FRUIT.

Triploid hybrid watermelon production requires a high level of grower sophistication. Triploid hybrid watermelons require a pollen source and bees to serve as pollen vectors. Triploid hybrids also require special care for satisfactory germination. Growers are encouraged to contact University extension personnel for government publications and information concerning recommended cultural practices. Nunhems USA, Inc., doing business as Bayer CropScience Vegetable Seeds ("BCS VS") can also supply certain of this information on request. We suggest growers develop expertise in growing triploid hybrid watermelons prior to instituting large scale commercial production.

- B. SPECIAL LIMITATION OF WARRANTY: ALL TRIPLOID HYBRID WATERMELON SEEDS ARE SOLD PURSUANT TO BCS VS' STANDARD TERMS AND CONDITIONS OF SALE. DESCRIPTIONS AND ILLUSTRATIONS OF TRIPLOID HYBRID WATERMELONS REPRESENT TRIPLOID HYBRID WATERMELONS AS GROWN UNDER FAVORABLE GROWING CONDITIONS IN FAVORABLE GROWING AREAS. APPEARANCE AND PERFORMANCE MAY VARY IN OTHER GEOGRAPHICAL LOCATIONS AND UNDER DIFFERENT GROWING CONDITIONS. BCS VS EXPRESSLY EXCLUDES ANY WARRANTY THAT THE TRIPLOID HYBRID WATERMELON SEED SOLD WILL PRODUCE "SEEDLESS" FRUIT. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

I have read the foregoing special limitation of warranty and agree to be bound by it.

Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_