



NOTICE, WAIVER, AND COMPLETE RELEASE AGREEMENT, INCLUDING LIMITATION OF WARRANTY AND LIMITATION OF LIABILITY (GROWER)

Watermelon Fruit Blotch (WFB), *Acidovorax avenae subsp. Citrulli*, is a serious disease which has become a significant risk in the area of watermelon cultivation. The pathogen causing WFB can be introduced into a field by infected seed, infected transplants, volunteer watermelon, mechanical means, or natural spread from alternate hosts.

- GROWER'S RELEASE OF ALL LIABILITY FOR WATERMELON FRUIT BLOTCH.** Acknowledging the above, GROWER still wishes to purchase watermelon seeds, and GROWER hereby FULLY AND UNCONDITIONALLY RELEASES R.D. CLIFTON COMPANY, INC., d/b/a CLIFTON SEED COMPANY FROM ANY AND ALL LIABILITY WITH RESPECT TO THE PRESENCE OF WATERMELON FRUIT BLOTCH PATHOGEN ON OR WITHIN SUCH SEEDS, OR THE VULNERABILITY OF SUCH SEEDS TO THE WATERMELON FRUIT BLOTCH PATHOGEN. GROWER ACKNOWLEDGES AND AGREES THAT CLIFTON SEED COMPANY HAS NO RESPONSIBILITY OR LIABILITY FOR ANY LOSSES OR DAMAGES RELATING IN ANY WAY TO WATERMELON FRUIT BLOTCH UNDER ANY LEGAL THEORY INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT PRODUCTS LIABILITY OR WARRANTY (EXPRESS OR IMPLIED). CLIFTON SEED COMPANY acknowledges that all other aspects of its supplier's express warranty, as contained on the supplier's label do apply, and that any waiver or limitation on the supplier's express warranty resulting from the terms and conditions of this Agreement, only apply to the presence on or within, or vulnerability of, such seeds to watermelon fruit blotch pathogens. GROWER further agrees that CLIFTON SEED COMPANY and its supplier have no liability or responsibility for watermelon seeds, or plants grown therefrom, if they are contaminated with watermelon fruit blotch pathogens after the seeds are delivered to grower. GROWER acknowledges that contamination may occur in a transplant house, in the field, or under circumstances beyond the control of CLIFTON SEED COMPANY.
- GROWER'S AGREEMENT NOT TO RESELL SEEDS OR PLANTS.** In consideration for CLIFTON SEED COMPANY agreeing to sell watermelon seeds to GROWER, GROWER hereby agrees that it/he will only use such seeds for plantings on its/his own holdings, and will not, under any circumstances, sell, transfer, distribute or in any way dispose of any such seeds or seedlings grown from the seeds, with or without consideration, to any third party. To the extent that GROWER does not utilize all such watermelon seeds purchased from CLIFTON SEED COMPANY, all such unopened containers may be returned to CLIFTON SEED COMPANY within six (6) months from the date of initial purchase for a refund of the purchase price.
- GROWER'S INDEMNIFICATION AGREEMENT.** GROWER acknowledges that in the event it/he breaches the terms and conditions of paragraph 2 of this Agreement with respect to the distribution of any such seeds to a third party, CLIFTON SEED COMPANY could incur liability to such third parties. THEREFORE, GROWER HEREBY UNCONDITIONALLY AGREES TO DEFEND AND INDEMNIFY CLIFTON SEED COMPANY FROM ANY AND ALL LOSS, LIABILITY, OR DAMAGE WHICH CLIFTON SEED COMPANY MAY INCUR, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES RELATING TO ANY CLAIM BY A THIRD PARTY WHO RECEIVED ANY PORTION OF THE WATERMELON SEEDS WHICH ARE COVERED BY THIS AGREEMENT AND SOLD BY CLIFTON SEED COMPANY TO GROWER.

1. **EXCLUSION OF WARRANTY.** IN ADDITION, CLIFTON SEED COMPANY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE). WITH RESPECT TO THE SEEDS, CLIFTON SEED COMPANY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES SUSTAINED BY GROWER FROM ANY CAUSE WHATSOEVER.
2. **GROWER UNDERSTANDS THIS AGREEMENT.** GROWER represents and warrants that it/he has consulted with or had an opportunity to consult with an attorney, and that GROWER fully understands the meaning and legal effect of this Agreement.
3. **ALL OTHER TERMS OF THE LABEL APPLY.** Except as expressly provided within this Agreement, all remaining terms, disclaimers, limitations, and conditions of purchase as disclosed and set forth on the supplier's label shall apply to all of GROWER'S purchases of watermelon seed.
4. **CHOICE OF LAW AND CHOICE OF FORUM.** The parties agree that this Agreement is entered into in the County of Duplin, State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. It is further agreed that any litigation by and between GROWER and CLIFTON SEED COMPANY, relating to the sale of all such watermelon seeds hereunder, shall take place in the County of Duplin, North Carolina.
5. **ATTORNEY'S FEES.** In the event that CLIFTON SEED COMPANY enforces any terms of this Agreement in any litigation with GROWER, CLIFTON SEED COMPANY shall be entitled to recover reasonable attorney's fees from GROWER.
6. **SEVERABILITY.** If any paragraph of this document shall be held for any reason to be unenforceable, the remaining paragraphs not so affected shall remain in full force and effect.
7. **ENTIRE AGREEMENT.** This document contains the entire agreement between the parties. No promises or inducements have been made except as expressly stated herein.

**I HAVE READ AND UNDERSTAND THIS RELEASE AGREEMENT AND
I AGREE TO BE BOUND BY ALL OF ITS TERMS.**

Dated: _____ By: _____
(Signature) Grower

(Address) _____
(Printed Name) Grower

(Telephone) _____
(Email)

	<u>VARIETY REQUESTED</u>	<u>BREEDER</u>	<u>QTY./LBS.</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____