

## SEED TERMS AND CONDITIONS

1. **General.** These terms and conditions are expressly incorporated into any contract, invoice, bill of lading, purchase order, receipt, confirmation or similar document (each, a "Contract") applicable to the sale or transfer any planting seed ("Seed") between Barkley Seed, Inc. ("BSI") and the customer set forth therein ("Customer").
2. **Payment.** Unless otherwise set forth in the Contract, Customer agrees to pay all amounts set forth in the Contract within 30 days of receipt of the Seed. Any amount not timely paid in accordance with the immediately preceding sentence shall accrue interest at the lesser of (a) 18% per annum and (b) the highest rate permissible by law. CUSTOMER HEREBY ACKNOWLEDGES ITS ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE OBLIGATION TO PAY ALL AMOUNTS SET FORTH IN THE CONTRACT WITHOUT DEDUCTION OR OFFSET OF ANY KIND AND FURTHER ACKNOWLEDGES ITS OBLIGATION TO PAY ANY INTEREST ACCRUING PURSUANT TO THIS SECTION 2 AND ANY COLLECTION COSTS INCURRED BY BSI.
3. **Security Interest.** To secure Customer's obligation to make payments pursuant to Section 2 and each and every debt, liability and obligation of every type and description which Customer or any of its affiliates may now or hereafter owe to BSI or any of its affiliates (including, without limitation, pursuant to Section 11), Customer hereby grants BSI a PMSI (as such terms is defined in the UCC (as defined below)) and Agricultural Lien (as such terms is defined in the UCC) in all Seed and any crop or other agricultural commodity derived from such Seed (collectively, "Products"), and all contract rights, accounts, rights to payment, insurance proceeds, or any other proceeds related (directly or indirectly) to the Products. Customer hereby acknowledges and agrees that BSI may file a financing statement or amendment under the UCC (or any other applicable law) in any jurisdiction with respect to the security interest created pursuant to the Contract (including these terms and conditions). To the extent the Products are sold in or transported to the state of California, Customer hereby acknowledges and agrees that the sale of such Products is subject to Chapter 128 of the California Agricultural Code. For the purposes of this Section 3, the term "UCC" shall mean the Uniform Commercial Code as from time to time in effect in the state of Arizona; *provided, however*, in the event that BSI's security interest in any Product (or part thereof) is deemed to be governed by the Uniform Commercial Code of a jurisdiction other than the state of Arizona, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction solely with respect to the security interest in that Product (or part thereof).
4. **Set Off Right.** Notwithstanding anything to the contrary in the Contract and without prejudice to any other right or remedy, BSI shall have the absolute right to set off any amounts now or hereafter owed to BSI or any of its affiliates by Customer or any of its affiliates (including, without limitation, pursuant to Section 11) against any amounts now or hereafter owed to Customer or any of its affiliates by BSI or any of its affiliates.
5. **Product Location; Sale; Encumbrance.** During the period of time beginning on Customer's receipt of the Seed until all amounts owed to BSI pursuant to the Contract are paid full, Customer hereby covenants and agrees to provide BSI with the location of all Seed and Products and refrain from (a) removing the Seed or Products from the location(s) disclosed to BSI without providing BSI with at least ten days' prior written notice (which notice shall set forth the precise address of any new location of the Seed and/or Products); (b) selling or otherwise transferring any Seed or Products without providing BSI with at least ten days' prior written notice (which notice shall set forth the name and address of any buyer or transferee), and (c) except as provided in Section 3, permitting any Seed or Products to become subject to any mortgage, pledge, lien, charge, hypothecation, security interest, encumbrance, adverse right, interest or claim, option, right of first refusal or any other restriction or limitation of any nature whatsoever. Customer hereby grants BSI permission to contact any potential buyer or transferee to inform such person(s) of BSI's security interest in the Seed and/or Products.
6. **Warranty; Limitation of Liability.** BSI warrants that all Seed shall be labeled in compliance with applicable law and that such Seed shall materially conform to the label description within recognized tolerances. Except for the warranties set forth in the immediately preceding sentence, BSI HEREBY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING (WITHOUT LIMITATION) THE WARRANTIES OF NON-INFRINGEMENT, PERFORMANCE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF BSI HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, IN NO EVENT WILL BSI BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE SEED STATED IN THE CONTRACT.
7. **Defect Claims.** All claims for Seed defects must be made within 30 days of planting and Customer must provide BSI with an opportunity to physically inspect and sample all Seed, fields, plants, and plant parts for which any defect is claimed.
8. **Returns.** BSI will not accept returns of bulk Seed or Seed in damaged or opened packaging. All other returns will be considered in BSI's sole and absolute discretion.
9. **Limited Use.** Customer shall strictly adhere to the Seed usage instructions set forth in the Contract and/or the Seed packaging. Under no circumstances shall Customer use any Seed (or plant part derived therefrom) for crossing of any kind, conducting selection, employing transformation techniques, conducting mutagenesis, tissue culture, or molecular or cellular techniques, or research of any kind. Customer acknowledges that any breach this Section 9 may result in irreparable harm to BSI for which there may be no adequate remedy at law. Customer therefore agrees that in the event of any threatened or actual breach of this Section 9, BSI shall be entitled to injunctive relief and that BSI will not be required to provide a bond or other security as a condition to or in connection therewith. This remedy will be in addition to any other remedy available at law or in equity.
10. **Packaging.** Absent BSI's consent, Customer shall not (a) package any Seed, (b) repackage any Seed, or (c) alter the packaging of any Seed.
11. **Indemnification.** To the fullest extent permitted by law, Customer shall defend, indemnify and hold harmless BSI, its former and present affiliates, and each of their respective former and present partners, owners, employees, agents, representatives, officers, directors, managers, lenders, successors and assigns (each, an "Indemnitee" and collectively, the "Indemnitees") for, from and against any and all liabilities, obligations, losses, interest, amounts paid in settlement of claims, deficiencies or damages, including any out-of-pocket expenses and reasonable attorneys' fees (collectively, "Losses"), whether or not involving a third party claim against any Indemnitee and regardless of whether or not such Loss is caused in part by any Indemnitee, resulting from or arising out of any breach, threatened breach, or inaccuracy with respect to any representation, warranty, covenant, obligation or

agreement set forth in the Contract (including these terms and conditions) by Customer or any person or entity receiving seed from Customer or any of Customer's transferees. Customer acknowledges that (a) each Indemnitee is an intended beneficiary of the Contract, and (b) all representations, warranties, covenants and obligations of Customer contained in the Contract, including (without limitation) Customer's indemnification obligations pursuant to this Section 11, shall survive any termination or expiration of the Contract.

12. Severability. Any provision of the Contract (including these terms and conditions) which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that provision only, be ineffective to the extent of such invalidity or unenforceability, without affecting in any way the remaining provisions of the Contract (including these terms and conditions) in such jurisdiction or rendering that or any other provision of the Contract (including these terms and conditions) invalid or unenforceable in any other jurisdiction.

13. Miscellaneous. Customer represents and warrants that Customer's legal name is exactly as listed on the Contract and the person executing the Contract on behalf of Customer is fully authorized to do so. Customer shall not assign the Contract, including (without limitation) an assignment by operation of law or by way of change of control of Customer, without the prior written consent of BSI, which may be withheld in its sole discretion. The Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their permitted successors and assigns. The rights and remedies of the parties under the Contract are cumulative and not alternative. The failure of any party at any time to require performance by any other party of any provision of the Contract shall not affect the rights of such party to require future performance of that provision or constitute a waiver of any other right under the Contract. Time is of the essence. The Contract shall be considered for all purposes as having been prepared through the joint efforts of the parties. The Contract (including these terms and conditions), together with any related license or agreement regarding Seed intellectual property (each, an "Intellectual Property Agreement"), constitutes the entire agreement and supersedes any previous agreement, whether written or oral, between the parties relating to the subject matter of the Contract. The Contract may only be modified, amended, or waived by a written agreement (expressly stating that it is an amendment to the Contract) signed by each of the parties. In the event of any action or proceeding at law or in equity between the parties to enforce any of the provisions the Contract, the unsuccessful party to such action or proceeding shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred by such successful party. The Contract shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the state of Arizona without regard to conflicts-of-laws principles that would require the application of any other law. Each party hereby agrees to the non-exclusive personal jurisdiction of the state or federal courts located within Yuma County, Arizona with respect to any claim or cause of action arising under or relating to the Contract, and waives personal service of any and all process upon it. Each party hereby waives any objection based on inconvenient forum and waives any objection to venue of any action instituted under the Contract. In the event of any conflict between these terms and conditions and the body of the Contract, the terms of the body of the Contract shall govern. In the event of any conflict between the Contract (including these terms and conditions) and any Intellectual Property Agreement, the terms of the Intellectual Property Agreement shall govern. The Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The exchange of copies of the Contract by electronic transmission (including electronic signatures) shall constitute effective execution and delivery of the Contract as to the parties and may be used in lieu of the original Contract for all purposes.