

## IMPORTANT — PLEASE READ CAREFULLY

Johnny's Selected Seeds and all affiliated companies and brands ("we," or "us") provides this website, its constituent webpages, and related websites (together, the "Sites"), and sells products and offers content to consumers, all subject to your agreement to these Terms & Conditions, which are final. By using the Sites (which includes accessing any content, functionality, or services), signing up for promotional mailings and emails, attempting to purchase or purchasing products from us, and/or registering with us, you agree to be bound fully by the provisions below, without change, as are published at such time. **THESE TERMS & CONDITIONS ARE AN ENFORCEABLE CONTRACT BETWEEN US WHICH AFFECTS OUR RESPECTIVE LEGAL RIGHTS AND INCLUDES A MANDATORY INDIVIDUAL ARBITRATION REQUIREMENT AND CLASS ACTION WAIVER IN [SECTION 4, BELOW](#).** We recommend you print out a copy of these Terms & Conditions for your records. An online copy of our Terms & Conditions can be viewed [here](#). Upon request by you or us, we each agree to sign and provide to each other a signed copy of these Terms & Conditions.

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## **1 • PRIVACY & CONSENT TO THIRD PARTY COMMUNICATIONS**

Please read our [Privacy Policy](#), which is incorporated into these Terms & Conditions and governs your use of the Sites. You agree with and consent to our **Privacy Policy**, including the information collection, analysis, and usage practices it describes. To the extent there is a conflict between the **Privacy Policy** and these Terms & Conditions, these Terms & Conditions will control to the fullest extent permitted by law. Please note that when you visit the Sites, your browser sends direct communications to third parties that we employ to perform services on our behalf, including companies that allow us to analyze your use of the Sites and help us send electronic or direct mail promotions to you. By using the Sites, you consent to these communications.

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## 2 • PRODUCT DESCRIPTIONS & OTHER WEBSITE CONTENT

We work hard to be as accurate as possible. Errors will be corrected when discovered and we reserve the right to revoke any stated offer and to correct any error, inaccuracy, or omission in any content presented by the Sites (including after an order has been submitted by you or an order confirmation has been sent by us). If a product offered by us is not as described, your sole remedy is to return it to us. Please see our return guidelines [here](#) for more details. We also reserve the right to limit the order quantity on any item.

Through our Grower's Library and other parts of our Sites, we make available information that may help you learn more about growing or other related topics, which may include information provided by third parties. You should be aware that the information presented on the Sites is based upon opinions formed in a diversity of ways, and that other professionals and hobbyists in the field will have differing experiences and opinions. You acknowledge that individual results may vary, including based on a wide variety of factors that may apply to your situation or application.

While we strive to present helpful information, tools, and suggestions, we do not warrant the accuracy, completeness, or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such information by you or any other visitor to the Sites, or by anyone to whom you provide such information.

We reserve the right to withdraw or amend the Sites, including any content we may offer, at our sole discretion and without prior notice.

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## 3 • NOTICE TO CALIFORNIA RESIDENTS — PROPOSITION 65

California Proposition 65 requires that special warnings be provided to California consumers when products contain chemicals known by the State of California to cause cancer, birth defects, or other reproductive harm if the use of those products may cause exposure to those chemicals above specific limits.

Please call us prior to ordering if you have any questions regarding the safety of our products.

We provide California residents with the following notice: You may report complaints concerning Proposition 65 to the Consumer Information Division of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at 800-952-5210.

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## 4 • LEGAL DISPUTES — THE REQUIREMENT TO ARBITRATE

We work hard to make things right with every customer. On occasion, a third party may be necessary to help us resolve our disputes, and this Section of the Terms & Conditions (the "arbitration agreement") limits us to arbitration (or small claims court, if a claim qualifies) in all such instances.

**YOU AND JOHNNY'S SELECTED SEEDS AGREE THAT ALL DISPUTES THAT CANNOT BE RESOLVED INFORMALLY SHALL BE RESOLVED ON AN INDIVIDUAL BASIS IN EITHER ARBITRATION OR SMALL CLAIMS COURT ONLY. YOU AND JOHNNY'S SELECTED SEEDS AGREE TO WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY AND TO PARTICIPATE IN ANY WAY IN A CLASS ACTION IN CONNECTION WITH ANY SUCH DISPUTES OR TO MAKE OR PROCEED WITH ANY CLAIM ON A COLLECTIVE OR CONSOLIDATED BASIS.**

This arbitration agreement covers all complaints, demands, and claims of any kind, including, but not limited to, those arising out of or related to these Terms & Conditions, the use and operation of the Sites, communications between you and us, and promotions by or behalf of Johnny's Selected Seeds, and the purchase and use of all products and services offered by Johnny's Selected Seeds (each a "Dispute," and, collectively, the "Disputes"). Disputes include, but are not limited to, statutory, regulatory, constitutional, contractual, common law, and tax-related claims, including claims alleging of negligence, fraud, and misrepresentation.

This arbitration agreement applies to all agents, attorneys, contractors, subcontractors, service providers, employees, and all others acting for, on behalf of, or under the direction of you and Johnny's Selected Seeds, including all affiliated companies (including, but not limited to, parents, subsidiaries, and sibling corporations). This agreement is binding on you and Johnny's Selected Seeds, as well as our respective heirs, successors, and assigns.

This arbitration agreement is governed exclusively by the Federal Arbitration Act ("FAA") and federal law, and not by any state or local laws, or the laws of other countries, concerning or purporting to place limits on the availability and scope of arbitration or which include requirements beyond or different from those imposed by the FAA. If any provision of this arbitration agreement is held to be unenforceable for any reason, the remaining parts of this arbitration agreement shall remain in effect to the fullest extent permitted by law and in a manner that facilitates resolution of Disputes in arbitration in a way that is cost-effective to all parties. If any other provision of the Terms & Conditions renders unenforceable any aspect of this arbitration agreement, such provision shall be treated as null, void, and of no effect.

You have the right to opt out of this arbitration agreement by sending written notice stating your intention to opt out to: [legal@johnnyseeds.com](mailto:legal@johnnyseeds.com), within thirty (30) days after your first becoming subject to it. Opting out of this arbitration agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with Johnny's Selected Seeds nor does it eliminate or change any other rights or requirements of the Terms & Conditions.

### **MANDATORY SETTLEMENT PROCESS**

Before You and Johnny's Selected Seeds can seek to resolve a Dispute in arbitration or small claims court, this mandatory sixty (60) day settlement process must be completed. To initiate this process, the claiming party must send to the other a short, written statement (a "Dispute Statement") setting forth their name, address, and email address and explaining their Dispute in sufficient detail for the other party to understand and investigate it, along with a proposal for resolving it, including any money being claimed and how that dollar amount was calculated. You agree to send Dispute Statements by email to [legal@johnnyseeds.com](mailto:legal@johnnyseeds.com), or by certified mail, return receipt requested to Johnny's Selected Seeds 955 Benton Ave. Winslow, ME 04901 Attn: Legal Claim.

Once a Dispute Statement is received, You and Johnny's Selected Seeds shall work in good faith to resolve the Dispute for a period of sixty (60) days. At the conclusion of this sixty (60) day period, if the Dispute has not been resolved, You and Johnny's Selected Seeds thereafter each have the right to resolve the Dispute in small claims court or through arbitration in compliance with the requirements of this arbitration agreement. All applicable statutes of limitation shall be suspended during the sixty (60) day informal settlement process.

### **ARBITRATIONS RULES & REQUIREMENTS**

While there is no judge or jury in an arbitration, the arbitrator has the power to award the same individual relief and must construe and apply the Terms & Conditions in the same way as a court would. If any cause of action or claim for relief cannot for any reason be addressed in arbitration, you and Johnny's Selected Seeds agree that any court proceedings shall be stayed pending the final resolution in arbitration of all arbitrable causes of action and claims for relief. The results of such an arbitration shall be binding in all court proceedings. The arbitrator also has the sole authority to and shall address all claims or arguments by both parties concerning the formation, legality, and

enforceability of this arbitration clause, the scope of this clause, and the arbitrability of any claim or issue arising between us.

### **The Arbitration Process.**

Any court of competent jurisdiction will have the authority to enforce all aspects of the arbitration agreement (including the requirement to complete the informal settlement process described above before filing a claim in arbitration) and, if necessary, to enjoin the filing or prosecution of arbitrations and/or the assessment of fees or costs by the American Arbitration Association ("AAA") or any other arbitral organization or arbitrator.

If the AAA or any other designated arbitration organization is for any reason unavailable, unable, or unwilling to handle an arbitration assigned to it under this arbitration agreement (including under the Mass Arbitration Rules, below), and You and Johnny's Selected Seeds cannot agree on an alternative organization or arbitrator, You or Johnny's Selected Seeds may petition a court of competent jurisdiction to appoint an organization or individual to conduct the arbitration consistent with the requirements of this arbitration agreement.

### **General Arbitration Rules.**

The arbitration process will differ depending on whether your claim is pursued individually or as part of a Mass Arbitration (as defined below). In the case of a Mass Arbitration, if there is a conflict between these General Arbitration Rules and the Mass Arbitration Rules (set forth below), the Mass Arbitration Rules will control. In the absence of such a conflict and in situations not involving a Mass Arbitration, these General Arbitration Rules will control.

Arbitrations shall be before a single neutral arbitrator. Arbitrations brought by consumers shall be governed by this arbitration agreement and the AAA Consumer Arbitration Rules and the AAA Consumer Due Process Protocol, which you can find here: <https://www.adr.org/consumer>. All other arbitrations shall be governed by this arbitration agreement and the AAA Commercial Arbitration Rules and the AAA Optional Appellate Rules, which you can find here: <https://www.adr.org/commercial>. To the extent there is a conflict between this arbitration agreement and any applicable AAA rules and protocols, the provisions of this arbitration agreement shall control.

Disputes that involve an individual claim for less than \$25,000 (US) in actual or statutory damages (but not including any amounts claimed for attorneys' fees and incidental, consequential, punitive, or exemplary damages, and excluding any damage multipliers), must be resolved exclusively through binding non-appearance-based arbitration based solely on the written submissions of the parties, including sworn statements. All other arbitrations will be conducted by telephone, online, or based solely on written submissions, including sworn statements, and will not involve any personal appearances by parties or witnesses. Judgment on an arbitrator's award may be entered in any court that has jurisdiction to do so.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to the AAA and to [legal@johnnyseeds.com](mailto:legal@johnnyseeds.com) or by certified mail, return receipt requested to Johnny's Selected Seeds, 955 Benton Ave., Winslow, ME 04901 Attn: Legal Claim. The AAA's address is American Arbitration Association Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043 (the "AAA Notice Address"). You may also send a copy to the AAA online at <https://www.adr.org>.

### **Mass Arbitration Rules.**

If twenty-five (25) or more claimants file, or indicate an intention to file, demands for arbitration against Johnny's Selected Seeds raising substantially identical Disputes, and counsel for the claimants are the same or coordinated across such Disputes (a "Mass Arbitration"), these special rules apply.

Claimants that are part of a Mass Arbitration (each a "Mass Arbitration claimant") must complete the sixty (60) day informal settlement process (described above) before proceeding further. Counsel for claimants and Johnny's Selected Seeds shall agree to the submission of a single Dispute Statement for all Mass Arbitration claimants, but only if that statement identifies each Mass Arbitration claimant by name, email address, and mailing address.

If the informal settlement process is unsuccessful, counsel for Mass Arbitration claimants and Johnny's Selected Seeds shall each select three (3) Mass Arbitration claimants to proceed to arbitration (each a "bellwether arbitration"), each with a different arbitrator, followed by a mandatory mediation involving all Mass Arbitration claimants. All statutes of limitation shall be suspended for the duration of the informal settlement process, the bellwether arbitrations, and the mediation required by this agreement.

If any demands for arbitration have been filed by Mass Arbitration claimants other than those selected for the six (6) bellwether arbitrations (the "non-bellwether claimants"), they shall promptly be dismissed without prejudice upon selection of the bellwether arbitration claimants. For such dismissed arbitrations, no arbitration fees or costs shall be owed or imposed by the arbitral organization beyond any initial filing fees. The bellwether arbitrations shall commence immediately upon the filing of requests for dismissal for all non-bellwether claimants. All bellwether arbitrations shall require a reasoned decision from the arbitrator and must be completed within one hundred twenty (120) days after they commence unless otherwise ordered by the arbitrator or agreed to by the parties.

Upon the resolution of all of the bellwether arbitrations, counsel for Johnny's Selected Seeds and counsel for claimants shall participate promptly and in good faith in non-binding confidential mediation for a period of not less than sixty (60) days in a good faith effort to resolve all Disputes of the Mass Arbitration claimants under the Mediation Procedures of the AAA or any other mediation rule to which the parties may agree.

If the bellwether arbitrations and the mandatory mediation are unsuccessful in resolving the Disputes of all Mass Arbitration claimants, those Mass Arbitration claimants whose claims have not been resolved shall then have the right to pursue their claims on an individual basis, but only with FairClaims, Inc. ("FairClaims"), and not the AAA, to be arbitrated under FairClaims' Small Claims Rules & Procedures, which are available at <https://s3.amazonaws.com/arbi-website/fairclaims-rules/FairClaims-Small-Claims-Rules.pdf>. If any cause of action or claim for relief cannot for any reason be addressed by FairClaims, you and Johnny's Selected Seeds agree that any court proceedings shall be stayed pending the final resolution in arbitration of all arbitrable causes of action and claims for relief. The results of such FairClaims arbitrations shall be binding in those court proceedings.

Decisions from the bellwether arbitrations shall be admissible in arbitrations filed with FairClaims. If for any reason FairClaims cannot handle a claim filed under this paragraph, You and Johnny's Selected Seeds shall negotiate in good faith for the substitution of an alternative arbitration organization for that claim whose fees and rules are comparable to those of FairClaims.

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## 5 • INTELLECTUAL PROPERTY RIGHTS

The Sites contain trademarks, copy, and designs that are owned by Johnny's Selected Seeds and may not be used by you without our prior written authorization in connection with the sale of products and services, or used in any manner that is likely to cause confusion among our customers or wrongfully disparages or discredits us. If you would like to discuss obtaining such permission, please contact us at [service@johnnyseeds.com](mailto:service@johnnyseeds.com).

You may link to the pages of our Sites provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part without our express written consent.

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## 6 • WEBSITE AVAILABILITY

We will not be liable if for any reason all or any part of the Website is unavailable at any time or for any period. From time to time, we may restrict access to parts of the Website, or the entire Website, to users, including registered users.

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## 7 • WEBSITE VISITOR RESPONSIBILITIES

You must only use the Sites for lawful purposes and in accordance with these Terms & Conditions. You agree not to engage in any activities which result in any changes or harm to the Sites or their availability to visitors.

If you choose, or are provided with a username, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Website or portions of it using your username, password, or other security information.

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## 8 • LIMITATION ON WARRANTIES & LIABILITY

**THE INFORMATION CONTAINED IN THE SITES IS PRESENTED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. YOUR USE OR RELIANCE ON SUCH INFORMATION SHALL BE AT YOUR OWN RISK, AND WITH NO LIABILITY TO JOHNNY'S SELECTED SEEDS.**

**UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY CLAIM THEY MAY HAVE AGAINST EACH OTHER.**

**GOODS SOLD ON THE SITE ARE SOLD "AS IS," AND YOUR SOLE REMEDY FOR CLAIMS ARISING OUT OF OR RELATING TO THE PURCHASE OR USE OF THOSE GOODS IS TO RETURN THE GOODS TO US FOR A REFUND OR FOR A REPLACEMENT PURSUANT TO OUR RETURN POLICY, WHICH IS AVAILABLE [HERE](#).**

**SOME STATES, INCLUDING THE STATE OF NEW JERSEY, DO NOT PERMIT SOME OR ALL OF THESE LIMITATIONS IN CONSUMER AGREEMENTS, AND, IN THOSE CASES, THESE LIMITATIONS SHALL BE ENFORCEABLE TO FULLEST EXTENT PERMITTED BY APPLICABLE LAW.**

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## 9 • WEBSITE LINKS

The Sites may contain links to other sites and resources provided by third parties. These links are provided for your convenience only. You agree that we have no responsibility for them or for any loss or damages that may arise from your use of them. If you decide to access any of the third-party websites linked to this Website, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

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## 10 • RIGHT TO CONSULT AN ATTORNEY

You understand that you have the absolute right to consult an attorney concerning an aspect of the Terms and Conditions and the **Privacy Policy** before accepting them, and that, by acknowledging your acceptance of these Terms and Conditions as provided for by the Sites, you represent that you understand their requirements and agree to be bound by them.

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## 11 • CONTACT INFORMATION

You can contact Johnny's Selected Seeds via email at e-mail at [service@johnnyseeds.com](mailto:service@johnnyseeds.com), by phone at **877-564-6697**, or by mail at Johnny's Selected Seeds, 955 Benton Avenue, Winslow, ME 04901. Please include information in your correspondence that will help us assist you with your inquiry or request, together with your name, email address, and mailing address.

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## 12 • EFFECTIVE DATE & CHANGES

This agreement was last updated on 01/12/2023, the effective date shown above, and applies to all uses, purchases, or registrations occurring after that date. Updates or changes to these Terms & Conditions shall not apply retroactively. If any part of these Terms & Conditions is found to be unenforceable for any reason, it shall be removed, and the remaining Terms & Conditions shall be fully enforceable.

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REV 01.12.2023