



1. Definitions

1.1. The following definitions are used in these Terms and Conditions of Sale:
"Agreement" shall have the meaning assigned to it in article 2.1.
"Buyer" shall mean the legal entity or natural person that acts in the exercise of its profession or its business when entering into a contract of sale with Enza Zaden or its wholesalers, dealers and retailers for the purchase of Products.

"Confidential Information" means all information disclosed by Enza Zaden to Buyer, whether orally or in writing, that is designated as confidential information or that reasonably should be understood to be confidential information given the nature of the information and/or the circumstances of its disclosure.

"Enza Zaden" shall mean Enza Zaden Canada Inc., having its registered office at 24 Oak St E, Unit 12, Leamington, ON N8H 2C2 Canada.

"Party" or **"Parties"** shall mean Enza Zaden or Buyer individually or jointly.

"Intellectual Property Rights" shall mean any and all intellectual property rights including, without limitation, patents, plant breeders' rights, copyrights, design rights, database rights, trademarks, tradenames, know-how and trade secrets, and all other similar rights existing anywhere in the world, as well as any applications thereto, and rights to file applications.

"Naktuinbouw" shall mean the Netherlands Inspection Service for Horticulture having its registered office in (2370 AA) Roelofarendsveen at Sotaweg 22 and registered at the Chamber of Commerce under number 41150707.

"Offer" shall mean specific terms applicable to the sale of Products proposed by Enza Zaden to the Buyer.

"Order Confirmation" shall mean the written confirmation of acceptance by Enza Zaden of the Purchase Order, by means of letter, e-mail or packing note.

"Plant Material" shall mean all plants and crops, produced or cultivated out of the Products, and destined for human (and/or animal) consumption.

"Price List" shall mean an overview of the selling prices of Products that Enza Zaden publishes and distributes from time to time.

"Products" shall mean seeds and planting material delivered by Enza Zaden to the Buyer.

"Purchase Order" shall mean a request for the purchase of Products placed by the Buyer.

"Resistance" shall mean the ability of a plant variety to restrict the growth and development of a specified pest or pathogen and/or the damage they cause when compared to susceptible plant varieties under similar environmental conditions and pest or pathogen pressure. Resistant varieties may exhibit some disease symptoms or damage under heavy pest or pathogen pressure. Two levels of Resistance are defined:

- **"High Resistance (HR)"**

shall mean plant varieties that highly restrict the growth and development of the specified pest or pathogen under normal pest or pathogen pressure when compared to susceptible varieties. These plant varieties may, however, exhibit some symptoms or damage under heavy pest or pathogen pressure.

- **"Intermediate Resistance (IR)"**

shall mean plant varieties that restrict the growth and development of the specified pest or pathogen but may exhibit a greater range of symptoms or damage compared to Highly Resistant varieties. Intermediate Resistant plant varieties will still show less severe symptoms or damage than susceptible plant varieties when grown under similar environmental conditions and/or pest or pathogen pressure.

"Terms and Conditions of Sale" shall mean these general terms and conditions of sale, as amended from time to time.

2. Applicability of the Terms and Conditions of Sale

2.1. These Terms and Conditions of Sale shall apply to and be part of all Offers, Purchase Orders and Order Confirmations relating to Products and are together hereinafter referred to as the "Agreement", unless expressly provided otherwise in the Agreement.

2.2. The applicability of the Buyer's general (purchase) terms and conditions is herewith explicitly excluded.

2.3. Enza Zaden reserves the right to amend these Terms and Conditions of Sale from time to time. A new version of these Terms and Conditions of Sale shall replace earlier versions thereof and shall apply to and govern all Agreements concluded after the date on which they have been published on Enza Zaden's website under www.enzazaden.com.

2.4. Any provision of these Terms and Conditions of Sale that is ruled to be null, void or invalid by a final court judgment or administrative order and is no longer open to appeal, shall be replaced by a provision that approximates as much as possible the purpose and intent of the invalid provision. The invalidity of one of the provisions shall not affect the other provisions of these Terms and Conditions of Sale or the Agreement.

2.5. In the event of any conflict between the provisions of these Terms and Conditions of Sale and those of any individual Offer and/or Order Confirmation, the provisions of the Offer and/or Order Confirmation shall prevail over the provisions of these Terms and Conditions of Sale.

3. Purchase Order and Order Confirmation

3.1. Enza Zaden agrees to sell Products to the Buyer at the rates set forth in Enza Zaden's Price List or as determined in an Offer.

3.2. Any Offer made by Enza Zaden is non-binding and will lapse in any case after five working days or any other specified time stated by Enza Zaden.

3.3. An Agreement shall enter into force between Enza Zaden and the Buyer upon Order Confirmation or upon acceptance of an Offer. No rights or obligations shall therefore arise between the Parties until the Order Confirmation has been sent or an Offer has been accepted.

3.4. All Purchase Orders are subject to the harvest and processing reservations customary in the seed industry, including but not limited to non-availability, seed production failure, spoilage during storage for any reason and/or any other seed quality issues. In the event of aforementioned reservations, Enza Zaden is not obliged to deliver but will endeavour to deliver pro-rata quantities and/or comparable alternatives, and Buyer shall not be entitled to any compensation of damages or costs.

3.5. Enza Zaden shall use its reasonable endeavours to perform according to the Purchase Order. Nevertheless, Enza Zaden shall at least be entitled to deviate from the Purchase Order placed by the Buyer with respect to size, packaging, quantity or weight.

3.6. When placing a Purchase Order, the Buyer shall report which information, specifications and documents are required under the rules and regulations of the country of delivery. The Buyer shall be responsible to inform Enza Zaden of any formalities that must be complied with to enable import. The Buyer shall also provide Enza Zaden with information

on any required certificates, phytosanitary matters, import documents or invoices.

3.7. If the Buyer fails to fulfil its obligation as referred to in the previous paragraph, the Buyer shall automatically be in default, without any notice being required. The Buyer shall be liable for any loss or damage incurred by Enza Zaden resulting from or in connection with such failure.

4. Prices

4.1. Unless agreed otherwise, all prices stated by Enza Zaden in its Price List and/or in an Offer are in CAD or USD, exclusive of additional charges and costs, including but not limited to handling fees, transport and insurance costs, (quality) certificate costs, value added tax and charges for which Enza Zaden reserves its rights to invoice such additional charges, costs or taxes to Buyer when applicable.

4.2. Enza Zaden reserves the right to unilaterally amend all prices stated in the Price List and/or in an Offer. Any new prices will be communicated to the Buyer by Enza Zaden and substitute earlier listed and/or offered pricing.

4.3. Enza Zaden reserves the right to pass on to the Buyer any price increases that are the result of, for example, increased transport costs, increases in material prices, increased labour costs, import or export levies or other taxes or price increases that have arisen after the conclusion of the Agreement but before the moment of delivery.

5. Cancellation

5.1. If a Purchase Order is cancelled by the Buyer after an Agreement has been concluded, the Buyer is liable to pay 10% of the price that Enza Zaden would have charged upon delivery or the amount of costs that Enza Zaden has incurred at the moment of cancellation, whichever of the two is higher.

6. Shipping

6.1. Enza Zaden shall endeavour to ship the ordered Products to the Buyer in accordance with the shipping date mentioned in the Agreement.

6.2. All shipping dates communicated by Enza Zaden are an indication only and should not be regarded as guaranteed nor can be made of essence by notice by or on behalf of the Buyer. In the event of delay or failure to ship, the Buyer shall send a written notice of default to Enza Zaden and shall allow Enza Zaden a further reasonable period of time to ship the Products. In no event shall Enza Zaden be liable for damage, penalty, loss, injury or expense, due to delay or failure in shipping and/or delivery nor shall the Buyer be entitled to terminate the Agreement.

6.3. Shipping by Enza Zaden takes place FOB (as defined in the latest edition of the Incoterms published by the International Chamber of Commerce in Paris (ICC)) to the agreed destination. The Buyer hereby authorizes Enza Zaden to select the carrier and to charge the cost of transport to the Buyer. The Buyer shall at its expense arrange for adequate and appropriate equipment for offloading of the Products.

6.4. Enza Zaden reserves the right to deliver in instalments and to tender separate invoices in respect of each instalment. Each instalment must be seen as separate, and no cancellation or termination of any instalment will entitle the Buyer to cancel any other instalment.

7. Payment

7.1. Payment of the purchase price is due, without any deduction, set-off, discount or debt settlement within thirty (30) days from invoice date by transfer into a bank account specified by Enza Zaden.

7.2. Enza Zaden will be entitled to set off sums due from Enza Zaden to the Buyer against sums due from the Buyer to Enza Zaden.

7.3. The Buyer shall be automatically in default without any notice of default being required, when not timely meeting any payment term. In case of payment in instalments, the Buyer shall be in default without any notice being required in the event of any overdue instalment and the remaining instalments shall become immediately due.

7.4. Without prejudice to any other right or remedy available to Enza Zaden, Enza Zaden will be entitled to charge interest or late fees at rate of 1,5% per month on all late payments or the interest or late fee rate as allowed by applicable law, whichever is the highest. Such interest will accrue on a daily basis until payment is made. All judicial and extrajudicial (collection) costs Enza Zaden incurs in connection with Buyer's failure to comply with its (payment) obligation shall be for the account of Buyer.

7.5. Payments made by the Buyer shall first serve to reduce the extrajudicial (collection) costs due, subsequently the outstanding interest and then the outstanding invoices in order of date starting with the oldest invoice.

7.6. Enza Zaden reserves the right to suspend performance under any Agreement with the Buyer, including but not limited to withholding all deliveries, until all and any outstanding payments owed by the Buyer to Enza Zaden under any Agreement have been made.

8. Complaints

8.1. The Buyer shall at its own expense immediately upon delivery inspect the Products and determine if (i) the correct Products are delivered, (ii) in the amounts as agreed, and (iii) no defects or deficiencies exist and shall notify Enza Zaden within five (5) days in the event of any deviations by written notice.

8.2. In case of non-visible defects, the written notice must be given within five (5) working days after the Buyer has discovered or could have reasonably discovered such defect.

8.3. The written notice shall provide the consignment information (seed lot number, the packing slip and the invoice details), the basis for any complaint as well as any supporting evidence (photos, expert statements etc.) in such a manner that Enza Zaden or a third-party expert can verify the complaint. The Buyer shall maintain records of the use and state of the Products and/or Plant Material. Enza Zaden is entitled to, and the Buyer will fully cooperate at its expense with any inspection, testing or other verification by Enza Zaden of the Products and/or Plant Material involved.

8.4. In no event shall the Buyer return the Products unless otherwise agreed by Enza Zaden in writing.

8.5. In the event that Enza Zaden does not receive written notification in accordance with 8.1 or 8.2, the Buyer shall be deemed to have accepted the Products complete and in satisfactory conditions.

8.6. In the event that the Parties are unable to resolve a dispute regarding the quality of the Products and/or Plant Material, either Party may order an inspection to be performed by Naktuinbouw, with the Party proven to be wrong paying the cost of the inspection. The inspection shall be performed on a certified sample and the findings shall be binding on both Parties, without prejudice to their right to submit disputes concerning the consequences of these findings in accordance with article 22.

8.7. BUYER'S SOLE REMEDY UNDER THIS CLAUSE 8 SHALL BE (AT ENZA ZADEN'S SOLE DISCRETION) REPLACEMENT OF THE RELEVANT PRODUCT OR CREDIT OF THE PURCHASE PRICE OF THE RELEVANT PRODUCTS.

9. Retention of Title

9.1. Enza Zaden shall retain title to the Products until the Buyer has complied with all its obligations towards Enza Zaden including but not limited to payment of all invoices, contractual interest and extrajudicial costs of collection. During the period of retention of title the Buyer will handle the Products with due care, maintain suitable insurance for the Products and, to the extent necessary, maintain the Products and have the Products clearly labelled as property of Enza Zaden. The Buyer will keep the Products separate from other materials to avoid confusion.

9.2. The Buyer may use the Products delivered by Enza Zaden in the ordinary course of business but may not pledge such Products or the Plant Material to third parties or otherwise use them as security for claims without Enza Zaden's prior written consent.

9.3. In the event that the laws of the country where the Products are delivered provide for farther-reaching possibilities to reserve title other than those contained in this article 9, such possibilities shall be deemed to have been agreed by the Parties.

9.4. The Buyer will immediately notify Enza Zaden if it is or becomes subject to any of the events listed in article 20.2. If before title to the Products passes to the Buyer, the Buyer becomes subject to any of the events listed in article 20.2 then, without limiting any other right or remedy Enza Zaden may have, Buyer's right to resell the Products or use them in the ordinary course of its business ceases immediately and Enza Zaden may at any time; (i) require the Buyer to return all Products and Plant Material in its possession, and (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products and/or Plant Material are stored in order to recover them.

9.5. At the first request of Enza Zaden, the Buyer shall pledge all the Products and/or Plant Material and all proceeds therefrom to Enza Zaden or create any other security satisfactory to Enza Zaden.

10. Force majeure

10.1. In the event of force majeure and without judicial intervention being required, Enza Zaden shall be able to wholly or partially suspend execution of the Agreement or, if the event of force majeure persists, to wholly or partially terminate the Agreement. In no event shall Enza Zaden be liable or required to pay any compensation to the Buyer in relation to such suspension or termination.

10.2. In addition to the meaning of force majeure under the applicable law, force majeure means: any circumstance that could not be reasonably foreseen and/or influenced by Enza Zaden and as a result of which delivery of all or any of the Products is not reasonably possible or cannot reasonably be required. Force majeure includes but is not limited to war (including also wars and/or conflicts that are ongoing at the time the Agreement enters into force), risk of war, riots, floods, water damage, fire, pandemics and epidemics, transport difficulties, unforeseen technical complications, breakdowns, strikes at Enza Zaden or at any third party engaged by Enza Zaden, blockades, bans on import or export, full or partial seizure or requisition of stocks at Enza Zaden, any of its subsidiaries or suppliers by civil or military authorities, lack of transport capacity, non-delivery or late delivery by suppliers of Enza Zaden, machine breakdowns, destruction and other stagnations in the companies of Enza Zaden, any of its subsidiaries or suppliers as well as scarcity as a result of which delivery of all or any of the Products is not reasonably possible or cannot reasonably be required.

10.3. Force majeure also means any circumstance that gives reason to rely on the harvesting and processing reservations customary in the seed industry referred to in article 3.4 above. Such circumstances entitle Enza Zaden to deliver to the Buyer a pro rata volume of the order, without prejudice to any other rights of Enza Zaden under this article 10.

11. Use (License) of the Products

11.1. Enza Zaden grants the Buyer a non-exclusive, non-transferable and limited license under its Intellectual Property Rights in and to the Products for the duration of the Agreement to use the Products for the sole purpose of a single commercial production or cultivation and sale of Plant Material. Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights from Enza Zaden to the Buyer.

11.2. The Buyer shall not use or cause or permit the use of the Products or Plant Material (including of parental lines) for any research, breeding, molecular or genetic analysis, crop, seed (re)production, propagation and/or multiplication or for any other purpose other than commercial production or cultivation of Plant Material in accordance with this article 11.

11.3. The Buyer shall not supply any Product to any other person or entity for production or cultivation nor distribute, sell, transfer, sublicense, encumber, pledge or offer as security any Product to and/or on behalf of any (legal) person or entity without prior written consent of Enza Zaden to which consent conditions may apply.

11.4. Buyer shall ensure that any third party it engages for cultivation of Plant Material are bound in writing by the same obligations as Buyer under the Agreement and shall supervise compliance thereof. Buyer shall remain fully responsible and liable for the performance or failure to perform the obligations by its engaged third party.

12. Disclaimer and Product Information

12.1. Descriptions, recommendations and illustrations provided by or on behalf of Enza Zaden in brochures, leaflets, data sheets and other advertising material, and on Enza Zaden's website (www.enzazaden.com), or in any other form of communication, including but not limited to information about quality, product specification, Resistances, composition, weight, measurement, treatment in the broadest sense, applications and characteristics of the Products ("Product Information") are based on Enza Zaden's assessment of its test results and practical experience. Product Information only serves as a guideline to assist the Buyer. Enza Zaden does not guarantee the completeness and accuracy of its Product Information with regard to the purpose and/or performance of the Products and the Plant Material.

12.2. The Buyer acknowledges that any Product information provided by Enza Zaden in relation to the quality (such as viability, germination, mechanical or genetic purity, seed health) or performance of the Products applies only to the results obtained by Enza Zaden at the time of the test with the specific seed sample used and under the conditions in which the test was performed. Tests have not been conducted under all possible conditions or agronomic practices. Therefore, the Buyer further acknowledges that such Product Information does not constitute



- an express or implied warranty by Enza Zaden as to the quality or performance of its Products under all possible conditions.
- 12.3. The Buyer acknowledges that the results obtained by the Buyer with the Products depend on such factors as the place of cultivation, the conditions prior to and during cultivation, including but not limited to storage of Products, the climate, the soil and crop protection methods used by the Buyer. The Buyer shall be solely responsible for determining the suitability and appropriateness for the intended purpose and/or use of the Products in the local conditions with the Buyer's specific agronomic practices.
- 12.4. The sole express warranty stated in article 13.1 shall lapse and Enza Zaden shall not be liable for any Product that has been repacked, treated, conditioned and/or manipulated in any way by the Buyer or by Enza Zaden or a third party on the Buyer's request and/or has not been used in the ordinary course of business.
- 12.5. The Buyer acknowledges that grafting on a rootstock may have negative effects on characteristics and Resistances of the Product. Enza Zaden cannot be held liable for any loss or damage to the Product grafted by the Buyer or a third party at the request of the Buyer. Any and all use of or grafting of the Product with a rootstock is entirely at the Buyer's own risk and responsibility.
- 12.6. The Buyer acknowledges that there are and/or may emerge certain mutations of pest or pathogen for which Enza Zaden High Resistance varieties do not offer High Resistance or for which the level of Resistance has not yet been established or cannot immediately be established.
- 12.7. The Buyer acknowledges that Products delivered by Enza Zaden are not fit for human or animal consumption.
- 13. Limited warranty and disclaimer of warranties**
- 13.1. ENZA ZADEN HEREBY PROVIDES AS ITS SOLE EXPRESS WARRANTY TO BUYER AND TO ANY SUBSEQUENT BUYER OR USER OF ENZA ZADEN PRODUCTS OR PLANTS GROWN FROM ENZA ZADEN PRODUCTS, THAT WHEN SUCH PRODUCT LEFT THE CONTROL OF ENZA ZADEN, THE PRODUCT CONFORMED TO THE DESCRIPTION OF THE PRODUCT ON THE PRODUCT'S LABEL, OR ON ENZA ZADEN'S CONTAINERS WITHIN TOLERANCES ALLOWED BY LAW.
- 13.2. Failure of the Product to germinate or resist disease or a reduction in crop yield and quality may occur as a result of multiple factors beyond Enza Zaden's control, including but not limited to, environmental and agronomic factors. The Products at times carry seed-borne diseases or have lower Resistance which may not be apparent to Enza Zaden or the Buyer. In addition, inclusion of Resistance traits in newly developed Products may have other growth impacts including but not limited to growth disorders and hypersensitive reactions to environmental conditions. Enza Zaden makes no representation that (i) the Product is free from seed-borne diseases whether previously known to exist or not identified until the Product is grown, (ii) the Product has Resistance to known or unknown mutations of a disease, or (iii) the crops grown from the Products will not react adversely to particular environmental conditions. Buyer is solely responsible for its decision to purchase the Product. All risks of non-performance, reduced performance and/or crop damage due to these factors shall be assumed by the Buyer.
- 13.3. ENZA ZADEN MAKES NO OTHER WARRANTIES OR REPRESENTATIONS REGARDING THE PRODUCT, AND ENZA ZADEN DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM SEED-BORNE DISEASES, RESISTANCE TO DISEASE OR ANY OTHER MATTER.
- 14. Limitation of liability and Indemnity**
- 14.1. SUBJECT TO ARTICLE 14.3, ENZA ZADEN SHALL IN NO EVENT BE LIABLE TO THE BUYER (OR ANY THIRD PARTY AFFECTED UNDER THE AGREEMENT) FOR ANY DIRECT OR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL AND/OR CONSEQUENTIAL DAMAGE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF YIELD, GOODWILL, LOSS OF REVENUES, OR ANY LOSS, COSTS OR DAMAGES RESULTING THEREFROM. THIS LIMITATION OF LIABILITY SHALL APPLY TO ANY CLAIM PRESENTED TO ENZA ZADEN WHETHER THE LEGAL GROUND FORMING THE BASIS OF SUCH CLAIM INVOLVES CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.
- 14.2. TO THE GREATEST EXTENT PERMITTED BY LAW, ENZA ZADEN'S LIABILITY SHALL BE LIMITED TO THE INVOICED AMOUNT (EXCLUDING VAT) OF THE RELEVANT PRODUCTS. AT ENZA ZADEN'S SOLE DISCRETION, ENZA ZADEN MAY DECIDE TO EITHER REPLACE THE RELEVANT PRODUCTS OR CREDIT THE PURCHASE PRICE OF THE RELEVANT PRODUCTS.
- 14.3. NOTHING IN THE AGREEMENT EXCLUDES OR LIMITS THE LIABILITY OF ENZA ZADEN OR THE BUYER IN RESPECT OF: (I) WILFUL MISCONDUCT OR GROSS NEGLIGENCE; (II) DEATH OR PERSONAL INJURY, AND/OR (II) LIABILITY WHICH MAY NOT OTHERWISE BE EXCLUDED UNDER THE APPLICABLE LAW.
- 14.4. THE RIGHT OF THE BUYER TO CLAIM FOR LIABILITY OR COMPENSATION SHALL LAPSE AFTER TWELVE (12) MONTHS FROM THE DELIVERY DATE OF THE PRODUCTS.
- 14.5. THE BUYER EXPLICITLY UNDERSTANDS AND AGREES TO THIS LIMITATION OF ENZA ZADEN'S LIABILITY.
- 14.6. THIS ARTICLE 14 CAN ALSO BE INVOKED BY (FORMER) EMPLOYEES, DIRECTORS, SUPERVISORY DIRECTORS, WHOLESALERS, DEALERS AND RETAILERS OF ENZA ZADEN AND THIRD PARTIES ENGAGED BY ENZA ZADEN, INCLUDING HEIRS AND LEGAL SUCCESSORS.
- 14.7. THE BUYER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND ENZA ZADEN AND ITS (CURRENT AND FORMER) AFFILIATES, DIRECTORS AND EMPLOYEES AGAINST ANY AND ALL THIRD-PARTY CLAIMS, ACTIONS, PROCEEDINGS, AND SUITS AND/OR RELATED LIABILITIES, DAMAGES, SETTLEMENTS, PENALTIES, FINES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES) INCURRED BY ENZA ZADEN ARISING OUT OF OR RELATING TO BUYER'S (ALLEGED) VIOLATION OR BREACH OF ANY TERM OF THE AGREEMENT, USE OR MISUSE OF THE PRODUCTS, AND/OR THE FAULT, NEGLIGENCE OR WILFUL INTENT OF BUYER.
- 15. Intellectual Property Rights**
- 15.1. The Buyer agrees and acknowledges that, subject to the license provided under article 11, paragraph 1, the exclusive right, title to and interest in any and all Intellectual Property Rights in the Products, Plant Material and any material derived therefrom, any mutations, varieties or (biological) material obtained therefrom or included therein, including but not limited to genetics, traits, technology and/or all its (phenotypical) characteristics, shall at all times be and remain absolutely vested in Enza Zaden or in any of its affiliates.
- 15.2. If and to the extent that the Buyer under the applicable law could establish any Intellectual Property Right in the Products, Plant Material and any material derived therefrom, or any mutations, varieties or (biological) material obtained therefrom or included therein, including but not limited to genetics, traits, technology and/or all its (phenotypical) characteristics, and in consideration of the licenses and other rights granted herein to Buyer, the Buyer hereby assigns, transfers and delivers in advance such Intellectual Property Rights to Enza Zaden, which assignment, transfer and delivery in advance Enza Zaden hereby accepts. The Buyer hereby authorizes Enza Zaden to register and otherwise effectuate or complete such transfer under the applicable law and shall at Enza Zaden's request assist in and carry out all actions deemed necessary by Enza Zaden to register, effectuate and complete such transfer.
- 15.3. The Buyer agrees to neither use nor register any trademark, trade name, company name, domain name, symbol or variety designation which is identical or confusingly similar to any trademarks, trade names, company names, domain names, symbols or variety designations owned by Enza Zaden or any of its affiliates, unless otherwise approved in writing by Enza Zaden.
- 15.4. In the event that the Buyer finds, observes or discovers a derived variety, including but not limited to any mutation in the production and cultivation of the Plant Material, the Buyer shall immediately notify Enza Zaden thereof in writing.
- 15.5. At the first request of Enza Zaden, the Buyer shall immediately provide Enza Zaden with sufficient material from the derived variety (e.g. mutant) for testing purposes. The Buyer is aware that anyone who encounters a derived variety (including a mutant) needs the permission of the holder of the original breeder's rights in order to be able to exploit the derived variety (including a mutant).
- 15.6. In the case of a derived variety (e.g. mutant), the Buyer shall require the prior authorization of Enza Zaden for the following acts in respect of constituents of the mutation or harvested material of the mutation: (a) production or reproduction, (b) conditioning for the purpose of propagation, (c) offering for sale, (d) selling or other marketing, (e) importing and/or exporting, (f) stocking for any of the purposes mentioned above.
- 15.7. New mutations derived from the mutations shall also be regarded as a derived variety of the (protected) varieties of Enza Zaden and paragraphs 4 to 6 of this article 15 shall apply accordingly.
- 15.8. The Buyer agrees to allow and fully cooperate with any inspection by Enza Zaden at any location where the Products are or may be stored for the purpose to verify any possible infringement of Enza Zaden's rights or violation of the Agreement. The Buyer shall allow Enza Zaden or a person or company appointed by Enza Zaden to have direct access to the Buyer's premises including, but not limited to, its greenhouses, offices, administrative and farming activities. The term 'activities' shall be understood to include activities carried out by third parties on behalf of the Buyer.
- 15.9. The Buyer shall fully cooperate with Enza Zaden to defend its rights against infringement of any of Enza Zaden's Intellectual Property Rights.
- 16. Confidentiality**
- 16.1. The Buyer shall keep confidential all Confidential Information which comes into its knowledge or possession in connection with its performance of the Agreement and shall not disclose anything with regard to such matters to third parties without the prior written consent of Enza Zaden.
- 16.2. The confidentiality obligation set out in this article does not apply in relation to information of which the Buyer can demonstrate it: (a) was, as evidenced by written records of the Buyer, lawfully in the Buyer's possession prior to its disclosure by Enza Zaden and was not acquired directly or indirectly from Enza Zaden; or (b) came lawfully into the Buyer's possession on a non-confidential basis from a third party who is not in breach of any secrecy or confidentiality obligation; or (c) came into the public domain after its disclosure to the Buyer, otherwise than through a breach of either the Agreement or another confidentiality-related undertaking.
- 17. Data Protection**
- 17.1. Parties shall comply with the applicable legislation and regulations with regard to the protection of Personal Data (as defined in the General Data Protection Regulation).
- 17.2. The Buyer agrees that Enza Zaden's privacy policy as published on its website www.enzazaden.com applies to any processing by Enza Zaden of Personal Data in connection with the performance of the Agreement. Enza Zaden may revise its privacy policy and will publish updates to its privacy policy on its website. It is the Buyer's responsibility to review and become familiar with the amended privacy policy.
- 18. Business Ethics**
- 18.1. Enza Zaden believes that the basis for a sustainable and successful business relationship is to have integrity and transparent business practices. Enza Zaden's Business Ethics Code (www.enzazaden.com/this-is-enza-zaden/who-we-are/how-do-we-do-business) describes the broad outlines of how Enza Zaden and its employees should behave and conduct Enza Zaden's business under various circumstances and in different situations. Enza Zaden may revise its Business Ethics Code and will publish updates on its website. The Buyer represents and warrants that it has read and understood the Business Ethics Code and agrees to comply fully with all provisions of the then-current version thereof and to conduct its business in accordance with the principles and values included therein. Buyer shall ensure that its affiliates, representatives, employees and third parties it engages are bound to similar obligations and shall supervise compliance thereof.
- 19. Compliance with applicable laws and regulations**
- 19.1. Parties shall conduct its business in strict compliance with applicable laws and regulations, including national and international anti-bribery and corruption laws, international anti-money laundering laws and international (export) sanctions.
- 20. Default, Suspension and Termination of the Agreement**
- 20.1. In the event that a Party fails to perform any of its obligations under the Agreement and such default continues for a period of thirty (30) days after written notice to the defaulting Party specifying the default, the other Party shall be authorized to suspend any further performance of the Agreement or to terminate it out of court by a registered letter, without prejudice to any of its other rights under the Agreement.
- 20.2. If the Buyer is liquidated, files for bankruptcy, is granted suspension of payments, makes a general assignment of its assets for the benefit of its creditors, becomes subject to receivership or is dissolved, all its payment obligations shall be immediately due and Enza Zaden shall be authorized to suspend any further performance of the Agreement or to terminate it, without prejudice to its right to claim compensation from the Buyer of all its damage and costs resulting therefrom.
- 20.3. If any of the events mentioned in article 20.2 occurs, the Buyer shall immediately inform Enza Zaden. The Buyer hereby grants Enza Zaden the right to execute, file or record such documents and to take any such actions, necessary to effectuate, enforce or implement the Agreement, and in particular to guarantee by preference the payment obligations.
- 21. Final Provisions**
- 21.1. These Terms and Conditions of Sale replace earlier versions thereof and apply to all Agreements concluded after the date on which they have been published on Enza Zaden's website under www.enzazaden.com.
- 21.2. The Buyer shall not assign its rights and obligations under the Agreement to third parties without Enza Zaden's prior written consent. The Buyer agrees that Enza Zaden shall be permitted at all times to assign its rights and obligations under the Agreement to third parties.
- 22. Applicable Law and Venue**
- 22.1. Each Party irrevocably agrees that any dispute or claim howsoever arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of the State of California, USA. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 22.2. If any dispute should arise between the Parties, the Parties will use reasonable efforts to settle such dispute before pursuing any remedy they may have at law. Should Parties fail to resolve a dispute amicably, then such dispute will exclusively be judged by the United States District Court for the Northern District of California in San Jose, California.