

DISCLAIMER

1. Provision of Information

Capitalized terms used shall have the same meaning ascribed to them in the General Conditions of Sale of Enza Zaden.

1.1 Buyer and user acknowledge that any information provided by Enza Zaden as to the quality (including but not limited to viability, germination, seed size, mechanical or genetic purity, seed health) or performance of its 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. Buyer and user further acknowledges that such information does not constitute an express or implied warranty by Enza Zaden as to the quality or performance of its Products.

1.2 Descriptions, recommendations and illustrations provided in Enza Zaden's brochures, leaflets, or in any other form of communication, including but not limited to information about Resistances and Product-specific information on disease resistances per variety, are based on Enza Zaden's assessment of its tests results and practical experience. Enza Zaden and seller do not warrant, guarantee, or imply similar results. Tests have not been conducted under all possible conditions or agronomic practices, and Enza Zaden and seller do not warrant or represent that the Product is usable under all possible use conditions. Buyer and user must determine whether the Product is suitable for the intended purpose and/or can be used in the local conditions with Buyer and user's specific agronomic practices.

1.3 ENZA ZADEN PROVIDES PRODUCT INFORMATION TO ASSIST BUYER AND USER AND UNDER NO CIRCUMSTANCES SHALL ENZA ZADEN BE LIABLE TO BUYER OR USER BASED ON INFORMATION PROVIDED, OTHER THAN AS SET FORTH IN SECTION 1 HEREIN, OR FOR RESULTS DEVIATING FROM PRODUCT INFORMATION. ENZA ZADEN SHALL NOT BE HELD LIABLE FOR ANY INFORMATION PROVIDED IN RELATION TO RESISTANCES AS DEFINED IN SECTION 5 HEREIN AND IN APPENDIX 1 TO THE GENERAL TERMS AND CONDITIONS OF SALE OF ENZA ZADEN.

2. Disclaimer for grafting

2.1 Grafting on a rootstock may have negative effects on characteristics and resistances of the Product (in particular regarding ToBRFV). Enza Zaden cannot be held liable for any loss or damage to the Product grafted by the Buyer or user or a third party at the request of the Buyer or user. Any and all use of or grafting of the Product with a rootstock is entirely at Buyer's and user's own risk and responsibility.

3. Risk of Nonperformance re ToBRFV

3.1 There are certain mutations and there may emerge certain further mutations of ToBRFV for which Enza Zaden HR ToBRFV tomato varieties do not offer high resistance or for which the level of resistance has not yet been established or cannot immediately be established.

4. EXPRESS LIMITED WARRANTY, DISCLAIMER OF WARRANTIES, AND LIMITATION OF LIABILITIES

4.1 **Allocation of Risks.** Failure of 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' control, including but not limited to, environmental and agronomic factors. Product at times carry seed borne diseases or have lower resistance to plant diseases which may not be apparent to Enza Zaden or Grower. In addition, inclusion of disease resistance traits in newly developed Products may have other growth impacts including but not limited to growth disorders and hyper sensitive reactions to environmental conditions. Enza Zaden make no representation that the Product is free from seed borne diseases whether previously known to exist or not identified until the Product is grown; or that the Product has resistance to known or unknown mutations of a disease or that crops grown from the Products will not react adversely to particular environmental conditions. Grower shall make the final choice to buy the Product. All risks of non-performance, reduced performance and/or crop damage due to these factors shall be assumed by the Grower.

4.2 **Express Limited Warranty.** ENZA ZADEN AND SELLER HEREBY PROVIDE AS THE SOLE WARRANTY TO BUYER AND TO ANY SUBSEQUENT BUYER OR USER OF ENZA ZADEN PRODUCT OR PLANTS GROWN FROM ENZA ZADEN PRODUCT, THAT WHEN THE PRODUCT LEFT ENZA ZADEN'S FACILITY, THE PRODUCT CONFORMED TO THE DESCRIPTIONS ON THE PRODUCT'S LABEL ON ENZA ZADEN'S CONTAINER, WITHIN TOLERANCES ALLOWED BY LAW.

4.3 **Disclaimer of Other Warranties.** ENZA ZADEN AND SELLER MAKE NO OTHER WARRANTIES OR REPRESENTATIONS REGARDING THE PRODUCT, AND ENZA ZADEN AND SELLER DISCLAIM 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.

4.4 **Exclusive Remedy.** BUYER'S AND USER'S EXCLUSIVE REMEDY AND ENZA ZADEN'S SOLE LIABILITY FOR LOSS OR DAMAGE ARISING FROM PURCHASE OR USE OF ENZA ZADEN SEEDS SHALL BE AN AMOUNT EQUAL TO THE PRICE PAID FOR THE SEEDS USED.

4.5 **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 SEEDS, OR FOR HARVESTING THE PRODUCE OF SUCH SEEDS. THIS

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

Buyer and user agree that if Enza Zaden refunds an amount equal to the price Buyer or user paid for Enza Zaden seeds, this limitation of liability will not have failed of its essential purpose.

5. Levels of Resistance. The levels of disease resistance are defined as follows (based upon an ISF approved version, May 2017):

5.1 High resistance (HR): 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.

5.2 Intermediate resistance (IR): 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. Intermediately 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.

6. Limitation on Re-Sale or Transfer.

6.1 Limitation. Buyer shall not sell or transfer the HR ToBRFV tomato varieties seed or any transplants grown therefrom to a third party, unless specifically approved by Enza Zaden in writing and made to a subsequent buyer and user that has signed a copy of this contract.

6.2 Indemnification. Buyer shall indemnify, defend and hold Enza Zaden AND sellers harmless from any and all claims arising from PROHIBITED SALE OR TRANSFER of HR ToBRFV tomato varieties seed or transplants BY BUYER to a third party, whether the legal theory forming the basis of such claim involves contract, tort, negligence, strict liability or otherwise.”