



# Terms and Conditions of Sale

## DESCRIPTION OF UNITS

The product being purchased is a single straw of bovine semen, which shall include approximately 0.50 milliliter of semen from the Sire indicated in the order (Sire) collected in accordance with the regulations and requirements of the National Association of Animal Breeders (NAAB) and Certified Semen Services (CSS) hereafter known as "Units".

## ORDERING

The Purchaser's placement of the order shall be deemed to be Purchaser's offer to purchase the number of Units indicated therein for the price as published by Seller or as otherwise agreed by the parties pursuant to and expressly limited to these terms and conditions (collectively "Order"). The Order is subject to acceptance by the Seller, which shall be made either by written confirmation of the Order that specifically accepts the offer or by fulfillment of the Order by shipping the Units. Purchaser's payment of the Purchase Price to Seller shall not be deemed acceptance of the offer by Seller. Orders will be filled in the order received however Seller reserves the right, at any time, to limit the amount of the Order filled by notifying the Purchaser.

## PAYMENT OF PURCHASE PRICE

Purchaser shall pay the full Purchase Price along with shipping and handling charges for all the Units at the time the Order is placed. In the event that Seller is unable to ship all the Units ordered, the Purchase Price, shipping, and handling charges will be recalculated and any excess amount paid by Purchaser will be refunded. All prices, amounts, and payments required hereunder are in U.S. Dollars. All sales are final and nonrefundable.

## UNAVAILABILITY OF ORDERED UNITS

If all or a portion of the Units ordered are for any reason not available and are not anticipated to become available, Seller shall notify Purchaser and Purchaser shall have the option to place an order for Units from a different sire or to receive a refund of any monies paid by Purchaser for the unfilled Order.

## DELIVERY OF THE UNITS ORDERED

a. The Units will be shipped Free On Board Shipping Point to the Purchaser's address as specified herein by a shipping agent. Shipping charges will be billed by the shipping agent. Title and risk in the Units shall pass to the Purchaser when the Units are turned over to the shipping agent. It is the Purchaser's responsibility to insure the Units during shipping if desired, to contact the shipping carrier to learn of any delivery limitations in Purchaser's area, and to notify the shipping carrier if any special arrangements are required. Purchaser shall make all arrangements necessary to promptly take delivery of the Units from the shipping carrier when they arrive.

b. Seller makes no warranty, express or implied, as it relates to the shipment of the Units under the terms of this Order. Purchaser acknowledges that Seller cannot guarantee the Units safe delivery within a specific time period. If the Units are delayed in shipping or if the shipping container is damaged, the Units may lose some of their integrity, quality, or characteristics. In such event, the Purchaser must promptly notify and file a claim with the shipping carrier. The Seller shall not be liable for any losses, costs, damages, or expenses incurred by the Purchaser or any third party arising directly or indirectly from damage in shipping or failure to meet any estimated delivery date.

## RETURN OF SHIPPING CONTAINER

Transport of the Units requires the use of a specialized protective shipping container ("Shipping Container"). Purchaser agrees to promptly return the Shipping Container to Shipping Agent in good and re-usable condition. Purchaser should check shipment upon arrival for accuracy. An automated pick up will be issued by the shipping agent. Please zip tie both lids and return the shipping container to the spot where it was delivered. If the shipping container has not been picked up within a week notify the shipping agent.

## SELLER'S WARRANTIES

- a. Seller warrants that the Units will be collected and processed according to regulations and requirements of the NAAB and CSS.
- b. Seller warrants that the Units contain the genetic material of the specified Sire.
- c. Seller makes no representations, guarantees, or warranties of any kind as to the fertilizing capacity, specific characteristics, or quality of the Units provided under this Order.
- d. Purchaser acknowledges and accepts that the fertility rates, traits, and characteristics of progeny obtained by using the Units may vary due to many factors including but not limited to: (i) the characteristics and fertility of the recipient cow; (ii) the environment in which the recipient cow is kept; and (iii) the skill and expertise of the artificial inseminator. The Seller will take all reasonable steps to maintain the fertilizing capacity of the Units but does not guarantee that the Units are fertile at the time of delivery.
- e. Seller is not responsible for Units that are lost, delayed, or damaged during shipping. If the Units are lost, delayed, or damaged due to Seller's error, the Seller, at its option, will, as Purchaser's exclusive remedy, either refund the Purchase Price or replace the Units.
- f. **SELLER MAKES THE REPRESENTATIONS AND WARRANTIES ABOVE AS OF THE TIME THIS ORDER IS PLACED ONLY AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE CONCERNING THE PRODUCT.**

## LIMITATION OF LIABILITY

Seller will use all reasonable efforts to meet its obligations to Purchaser, but in the unlikely event that Seller is unable to fulfill its obligations hereunder for any reason, the parties agree that the Seller's liability, in the absence of fraud, will not exceed the amount paid by Purchaser for the Units. Seller will not be liable for any penalty, loss, injury, damage, or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any delay or failure entitle Purchaser to refuse to accept any delivery or performance of or repudiate the Order. **UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR LOST PROFITS OR ANY OTHER INCIDENTAL CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES WHETHER IN CONTRACT OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE WHICH ARISE OR MAY ARISE OUT OF OR RELATE TO THIS ORDER.**

## GENERAL CONDITIONS.

No amendment or waiver of any of the provisions of these terms and conditions shall be effective unless the same is in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

In the event any provision or portion of these terms and conditions is held to be invalid or unenforceable, such provision or portion thereof shall be severed herefrom, and the remaining provisions will remain in full force and effect, if the essential terms and conditions hereof remain valid.

Except as otherwise expressly provided herein, each party shall pay its own costs and expenses in connection with the transactions contemplated herein. Notwithstanding the foregoing, all costs, expenses, and reasonable attorneys' fees incurred by the prevailing party of any action to interpret or enforce the party's rights under this Order may be recovered from the non-prevailing party.

This Order contains the entire understanding between the parties with respect to the transactions contemplated hereby and supersedes all other documents and understandings between or among the parties on the subject matter hereof. Any and all prior agreements, understandings, or representations not reflected in this Order are hereby canceled, rescinded, or disclaimed and were not to be relied on by the parties.

The substantive laws of the County of Windham, State of Vermont shall govern all matters arising out of, or relating to this Order. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Order may be brought by either party but only in the courts of the County of Windham, State of Vermont and each of the parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

Section and other headings contained in this Order are for reference purposes only and shall not affect in any way the meaning or interpretation of this Order.

**BOTH SELLER AND PURCHASER EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES AND FOREVER RELINQUISHES ANY AND ALL CLAIMS OR RIGHTS THAT SUCH PARTY MAY HAVE TO ANY TRIAL BY JURY ON ANY ISSUE ARISING OUT OF ANY LITIGATION OR DISPUTES OR CLAIMS UNDER THIS PURCHASE ORDER OR IN ANY WAY ASSOCIATED HERewith, SUCH PARTIES INTENDING TO WAIVE AND FOREVER RELINQUISH ANY RIGHT UNDER THE SEVENTH AMENDMENT OF THE UNITED STATES CONSTITUTION TO TRIAL BY JURY AND ANY CLAIMS OR RIGHTS TO A TRIAL BY JURY UNDER THE CONSTITUTION OF THE STATE OF VERMONT OR ANY OTHER CONSTITUTIONAL, STATUTORY, OR OTHERWISE APPLICABLE LAW PROVIDING FOR A RIGHT OF TRIAL BY JURY.**