

# Conditions of Sale



## GENERAL TERMS & CONDITIONS OF SALE AND DELIVERY

April 2012

These General Terms and Conditions of Sale and Delivery govern all sales and delivery transactions by Enza Zaden USA, Inc., 7 Harris Place, Salinas, CA 93901 USA. All previous general terms and conditions of sale and delivery are hereby superseded.

### Article 1 Definitions

1. ENZA: Enza Zaden USA, Inc., a California corporation.
2. Product: seeds, organic seeds, herbs, planting material and/or any other product or services provided by ENZA.
3. Purchaser: natural or legal person entering into a contract of sale with ENZA for the purchase of Products.
4. Price List: an overview of the selling prices of the Products that ENZA publishes and distributes from time to time. ENZA retains the right to change those prices at any time.
5. Parties: ENZA and Purchaser jointly.
6. Party: either ENZA or Purchaser individually.
7. Resistances: the concept and terminology described in Appendix 2.

### Article 2 Application of General Terms & Conditions of Sale and Delivery

1. These terms and conditions shall apply to every offer and every agreement between ENZA and a Purchaser, unless the Parties expressly agree to modify these terms and conditions in writing.
2. The application of any general terms and conditions used by Purchaser shall be explicitly excluded.
3. The Product Specifications and Resistance terminology attached to these terms and conditions as Appendix 1 and 2 shall form an integral part of any agreement between ENZA and the Purchaser.

### Article 3 Prices and Purchase Orders

1. ENZA agrees to sell Products to Purchaser at the rates set forth in ENZA' Price List valid at the time Purchaser's purchase order is received. ENZA reserves the right to amend its prices periodically; each new price list shall render the previous price list invalid.
2. All orders placed by Purchaser shall be subject to confirmation and acceptance in writing by ENZA and subject to seed availability. All Purchase orders may be subject to proration or allocation by ENZA and Purchaser shall not be entitled to damages if ENZA elects to prorate or allocate any Purchaser's orders.
3. If the quantity ordered by the Purchaser differs from the ENZA standard pack quantities, ENZA shall be at liberty to deliver the next largest standard pack quantity at the standard pack quantity price.
4. Any Purchaser requests for non-standard pack sizes shall be subject to a "repack fee" of \$100 per purchase order. ENZA shall be entitled to deviate minimally from the Purchaser's order with respect to size, packaging, quantity or weight.
5. ENZA reserves the right to refuse orders of value less than \$500. Upon accepting such an order, ENZA shall charge a \$25 administration fee.
6. When placing an order, Purchaser shall report which information, specifications and documents are required under the rules and regulations of the country of delivery. If the Purchaser fails to comply with these regulations, ENZA cannot be held liable for the delays or the non-delivery of an order. The following additional fees shall be applied to Purchaser's invoice, where applicable:  
Phytosanitary Certificate: \$25.00  
Certificate of Origin: \$25.00  
Purity Certificate: \$15.00
7. If after a purchase order is accepted and prior to delivery, Purchaser wishes to cancel the purchase order, Purchaser agrees to pay 10% of the invoice price as a cancellation fee to compensate ENZA for its costs incurred in placing and cancelling the order, including but not limited to, any packaging and restocking costs. This will be without prejudice to ENZA's right to demand compensation in full for the cancellation.

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## Article 4 Delivery

1. ENZA shall be allowed to effect partial deliveries; ENZA will separately invoice each partial delivery.
2. ENZA undertakes to make deliveries within a reasonable period of time after acceptance of the purchase order or as otherwise specified in the purchase order. In the event delivery is not made in accordance with the foregoing, Purchaser shall provide ENZA with written notice thereof and shall, as is sole and exclusive remedy, either allow ENZA a further reasonable period of time to deliver the Products or may cancel the purchase order by written notice to ENZA.
3. The Products shall be delivered to Purchaser F.O.B., Salinas, California. Purchaser shall bear the risk of loss following delivery of the Products for shipment, and will have to provide for its own insurance, if so desired.
4. Purchaser authorizes ENZA to select a recognized carrier for shipment of Products to Purchaser to the location set forth in paragraph 4 below and to invoice Purchaser for any carrier costs advanced by ENZA. Purchaser's recognized carriers shall include: \_\_\_\_\_ [specify i.e., UPS, Federal Express, etc.]. Purchaser is authorized to receive ENZA Products at the location(s) designated in the purchase order.

## Article 5 Payment, Title and Security Interest

1. Purchaser shall remit payment for all Products within 60 day from the date of invoice. Payment shall be sent to Enza Zaden USA, Inc., 7 Harris Place, Salinas, CA 93901.
2. Purchaser will receive a 2% discount if payment is received within 15 days of the invoice date
3. Interest at a rate of 1% per month will be charged to overdue accounts.
4. Past due accounts, that require use of a collection agency or attorney to obtain payment, are subject to payment of service charges in an amount equal to ENZA's costs of collection. Purchaser must pay these service charges prior to re-establishing favorable credit status with ENZA.
5. If the Purchaser is liquidated, files bankruptcy or is granted a suspension of payments, its payment obligations shall immediately be payable on demand and ENZA shall be authorized to suspend any further performance of this Agreement or to terminate it, without prejudice to its right to claim damages from the Purchaser
6. ENZA reserves the right to refuse further deliveries of Products if Purchaser is not in compliance with these payment terms.

## Article 6 Defects – Periods for Filing Complaints

1. Purchaser shall inspect the items upon delivery or as soon as possible thereafter. It shall determine whether:
  - The correct items have been delivered;
  - The correct quantity has been delivered, in accordance with the relevant order;
  - The items delivered satisfy any quality requirements expressly agreed to in writing by the Parties.
2. Purchaser shall notify ENZA in writing within five working days after delivery if the correct items or quantities have not been delivered or within five working days after Purchaser discovers that the Products have failed to satisfy any agreed upon quality requirements. With such notification, Purchaser shall report the consignment information (seed lot number), the packing slip and the invoice details.
3. The notification shall also provide the basis for any complaint in such a manner that ENZA or an outside expert can verify each complaint. Purchaser shall maintain a logbook for this purpose in which it records the use of the Products.
4. If ENZA does not receive written notice of a complaint with respect to the Products within the applicable time period, Purchaser shall be deemed to have accepted the Products and the sale shall be final. All claims for damage or loss not made in writing within said time period shall be deemed waived by Purchaser and Purchaser expressly assumes and accepts all liability for such damage or loss
5. If the Parties are unable to resolve a dispute regarding the quality of the Products, either Party may order an inspection by a mutually agreed third-party seed testing lab; with the Party proved to be wrong paying the costs of the inspection. The inspection shall be performed on a certified sample. The findings of this inspection shall be binding on both Parties, without prejudice to their right to submit disputes concerning the consequences of these findings to the bodies referred to in Article 14.
6. In any event, ENZA's liability is limited as provided by article 9 below and no salesman or Purchaser of this product is authorized in any way to modify, limit or expand the foregoing provisions.

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## Article 7 Provision of Information

1. Descriptions, recommendations and illustrations provided in ENZA' brochures, leaflets, or in any other form including but not limited to those pertaining to Resistances, and Product specific information such as but not limited to disease resistances indicated per variety, correspond as closely as possible to ENZA 's tests and practical experience.
2. Purchaser acknowledges that any information provided by ENZA as to the quality (viability, mechanical or genetic purity, seed health) or performance of its Products applies only to the results obtained by ENZA at the time of the test with the specific seed sample used and under the conditions in which the test was performed. Purchaser further acknowledges that such information does not constitute an express or implied warranty by ENZA as to the quality or performance of its Products.
3. The results obtained by any Purchaser will depend on such factors as the place of cultivation, the conditions prior to and during cultivation, including how the Products are stored, the climate, the soil and the nutrients as well as the cultivation and crop protection methods used by Purchaser. Purchaser shall be solely responsible for determining the suitability and appropriateness of the use of the Products in the different conditions and/or for the different purposes.
4. ENZA PROVIDES PRODUCT INFORMATION TO ASSIST PURCHASER AND UNDER NO CIRCUMSTANCES SHALL ENZA BE LIABLE TO PURCHASER BASED ON INFORMATION PROVIDED OR FOR RESULTS DEVIATING FROM PRODUCT INFORMATION. ENZA SHALL NOT BE HELD LIABLE FOR ANY INFORMATION PROVIDED IN RELATION TO RESISTANCES AS DEFINED IN APPENDIX 2.
5. The Purchaser hereby explicitly understands and agrees to this limitation of ENZA' responsibilities.

## Article 8 DISCLAIMERS OF WARRANTIES

1. To the greatest extent permitted by State and Federal seed laws, the Products are sold AS-IS.
2. ENZA hereby provides as its sole express warranty to Purchaser, that such Products will, at the time of delivery to Purchaser, meet the description of the Products on ENZA's containers within tolerances allowed by law.
3. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT OR ON LABELS ATTACHED TO THE PRODUCTS. ENZA DISCLAIMS THE MAKING OF ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND FREEDOM FROM SEED-BORNE DISEASES, OR ANY OTHER MATTER.
4. No salesman or Purchaser of this product is authorized in any way to modify, limit or expand in any manner the foregoing disclaimer of warranties.
5. The Purchaser hereby explicitly understands and agrees to this disclaimer of warranties.

## Article 9 LIMITATION OF LIABILITY

1. IN THE EVENT ANY PRODUCT PROVES TO BE DEFECTIVE OR OTHERWISE UNACCEPTABLE IN QUALITY (VIABILITY, MECHANICAL OR GENETIC PURITY, SEED HEALTH), PERFORMANCE OR OTHERWISE AND O THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, ENZA'S LIABILITY WITH RESPECT TO SUCH PRODUCT SHALL, AT ENZA'S ELECTION, BE LIMITED TO EITHER: i) REPLACING THE PRODUCT FREE OF CHARGE, OR ii) AN AMOUNT EQUAL TO THE PURCHASE PRICE OF THE PRODUCT, AND SUCH LIMITATION SHALL APPLY UNDER ALL CIRCUMSTANCES AND REGARDLESS OF THE NATURE, CAUSE OR EXTENT OF THE LOSS OR THE NATURE OF THE CLAIM (WHETHER SUCH THEORY INVOLVES NEGLIGENCE, CONTRACTUAL LIABILITY, LATENT OR PATENT DEFECT OR OTHERWISE), AND SHALL NOT INCLUDE ANY AMOUNT FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.
2. No salesman or Purchaser of this product is authorized in any way to modify, limit or expand in any manner the foregoing limitation of liability.
3. The Purchaser hereby explicitly understands and agrees to this limitation of ENZA' responsibilities.

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## Article 10 Intellectual Property Rights.

1. Purchaser agrees that all intellectual property rights relating to the Products shall at all times be and remain absolutely vested in ENZA and that Purchaser shall acquire no rights thereto.
2. Purchaser agrees that ENZA has the exclusive right, title and interest in and to ENZA' trademarks, trade names, and trade dress (including designs and color schemes). Purchaser is not authorized to use the trade names, trademarks and trade dress that are owned or used by ENZA. unless authorized by ENZA in writing.
3. Purchaser agrees neither to register, nor to have registered, any trademarks, trade names or symbols of ENZA or which are confusingly similar to ENZA 's.
4. Purchaser agrees that it shall not use the name "Enza Zaden USA, Inc.", " Enza Zaden Inc.", nor "Vitalis Organic Seeds" or any variation thereof as part of its trade name or corporate name.
5. Purchaser shall not use the Products for any other purpose than growing crops for human or animal consumption. Purchaser shall not sell nor deliver Products to ENZA - competitors, or other seed companies.
6. Under no circumstances shall Purchaser use the Products and/or its components and/or its harvestable material in any way for multiplication and/or reproduction of any kind of material. This is also applicable for essentially derived varieties of a delivered variety.
7. Purchaser agrees to allow and fully cooperate with any inspection at any time by ENZA. Purchaser shall allow ENZA or a person or company appointed by ENZA to have direct access to Purchaser's premises including, but not limited to, its greenhouses, administrative and farming activities, for the purposes verifying any possible infringement of the rights and obligations provided in this Agreement. The term "activities" shall be understood to include activities carried out by third parties for Purchaser.
8. Purchaser shall fully cooperate with ENZA to defend its rights against infringement.
9. Purchaser shall ensure that anyone who manipulates or somehow receives Products from Purchase shall comply with the obligations set forth in this article.

## Article 11 Force Majeure

ENZA shall not be liable for delays or failure to perform any obligation due to any cause beyond ENZA' reasonable control, including, but not limited to, acts of God, acts of Purchaser, acts of civil or military authority, labor disputes, fire, riot, civil commotion, sabotage, contamination, war, embargo, blockage, flood, earthquake, inclement weather, epidemic, quarantine, stop-order, seizure, transportation delay, governmental restriction, or shortage of power, labor, crops, materials or supplies.

## Article 12 Suspension

1. If the Purchaser fails to perform any of its obligations under these General Terms and Conditions of Sale and Delivery:
  - ENZA shall have the right to immediately suspend its performance until the Purchaser has remedied such failure and paid all amounts due and payable (including any attorney's fees, court costs, collection agency charges) and/or
  - ENZA may require Purchaser to submit payment in full or to provide adequate security for the performance of its obligations in a form acceptable to ENZA.
2. ENZA shall at all times be entitled to require payment in full or adequate security from the Purchaser if ENZA has any reasonable doubt that the Purchaser will perform its obligations properly or on time.

## Article 13 Applicable Law

This Agreement shall be governed by the laws of the State of California.

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## Article 14 Dispute Resolution.

1. All rights to recover against ENZA, its agents, employees, officers and directors shall be barred after one year from the occurrence of the incident that gave rise to the action.
2. All claims and disputes, including counterclaims or defenses (“Dispute”), arising out of or relating to any term or provision of this Agreement or the sale of the Products, or based upon a claim or negligence or Product failure due to nonperformance as represented, labeled or warranted, shall be resolved in accordance with the following procedure:
  - a) After written notice from either Party setting forth the substance of the Dispute, the Parties shall meet in good faith in Salinas, California within ten (10) days and attempt to resolve the Dispute.
  - b) If the Parties do not resolve the Dispute after such meeting or if either Party refuses to meet, either Party may, upon written demand for mediation, submit the Dispute to mediation in Salinas, California. If the Parties cannot agree on the selection of a mediator familiar with the vegetable industry within ten (10) days of such demand, either Party may petition the Monterey County California Superior Court for the selection of a mediator and may submit the names of potential mediators together with background information on the proposed mediators’ experience in the vegetable industry. The mediation shall be held promptly after the appointment of a mediator and conducted in English. Each Party shall share advance one-half of the costs of the mediator.
  - c) If the Parties fail to resolve the Dispute through mediation or one of the Parties refuse to mediate, the Dispute shall be decided by neutral binding arbitration conducted in English. Upon receipt of a written demand for arbitration by either Party, the Parties shall select a mutually agreeable arbitrator who shall be familiar with the vegetable industry. In the event the Parties do not agree on an arbitrator within twenty (20) days after a request to arbitrate is given, either Party may petition the Monterey County California Superior Court for appointment of an arbitrator who is familiar with the vegetable industry. The decision of the arbitrator shall be binding upon the Parties and include a written statement of facts and the legal basis for the arbitrator’s decision. The decision shall be final upon delivery of the written decision to the Parties. Except as otherwise herein provided, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure sections 1280 et seq. Each Party shall advance one-half of the costs of the arbitrator. Venue for any arbitration shall be Monterey County, California unless another location is agreed to by the Parties in writing.
3. Notwithstanding the foregoing, i) either Party may seek from a court any provisional, protective or interim relief that is necessary or appropriate to protect the rights or property of that Party, pending the establishment of the arbitrator’s final determination, and ii) the Parties shall not be relieved from first complying with the complaint and mediation procedures set forth in the State or Federal Seed Acts, if the Dispute, or any portion thereof, is subject to such procedures. If the entire Dispute is mediated in accordance with the State or Federal Seed Acts and it is not resolved through such process, the Parties may proceed directly to arbitration as provided in paragraph 14.2(c), above. Venue for any court action shall be the Monterey County California Superior Court or, where federal law or federal jurisdiction is applicable, the United States District Court for the Northern District of California in San Jose, California. The Parties consent to personal jurisdiction of the said Superior and Federal Courts.
4. In the event any Party institutes a legal action or arbitration, including a bankruptcy proceeding, to interpret or enforce these General Terms and Conditions of Sale and Delivery, or their respective rights and obligations hereunder, the prevailing Party in such action or arbitration shall be entitled to an award of reasonable attorney’s fees, expert fees, court costs, mediation fees, arbitration fees, and other costs reasonably incurred in such action. A Party who incurs fees and costs in enforcing a judgment or arbitration award shall be entitled to collect such fees and costs from the Party against including all fees and costs for post-judgment or post award collection activities.

## Article 15 Severability

In the event that any portion of these General Terms and Conditions of Sale and Delivery is determined to be invalid or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect and the provision set aside will be replaced with a provision that approximates the nature and purpose of the invalid provision as much as possible.



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## Article 16 Notices

1. Any notice required under these General Terms and Conditions of Sale and Delivery must be in writing, and may be given either personally, by facsimile or by certified mail, return receipt requested. If by facsimile, a notice shall be deemed to have been given and received at the time and date the facsimile is received at the number provided below and provided notice is also promptly given by certified mail. If personally delivered, a notice shall be deemed to have been given and received when delivered to the Party to whom it is addressed. If given by certified mail, the same shall be deemed to have been given and received on the first to occur of

(i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or  
(ii) three (3) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Such notices or communications shall be given to the ENZA at the address set forth below and to Purchaser at either the address set forth on the purchaser order or Purchaser's address designated on Purchaser's credit application.

ENZA Zaden USA, Inc.  
7 Harris Place  
Salinas, Ca. 93901  
(831) 754-2300 (Tel)  
(831) 751-6103 (Fax)

2. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Notwithstanding the prescribed method of delivery set forth above, actual receipt of written notice by the person designated above shall constitute notice given in accordance with these General Terms and Conditions of Sale and Delivery on the date received, unless deemed earlier given pursuant to the foregoing provisions.

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## Appendix 1 Product Specifications

Vegetable growing has become a highly specialized and intensive activity. As a result of the ever increasing demand for a better quality, vegetable growers and plant raisers require an improved quality of basic material.

The demand for specific seed forms and more information about seed quality has strongly increased to better influence emergence and required number of plants.

Seed is a natural product. The often varying environmental conditions thus influence final results. It is therefore often not possible to give detailed information about seed performance and other seed characteristics.

In order to meet customer's demands, ENZA has drawn up quality standards for the various seed categories.

The specifications mentioned are ENZA' minimum standards. In relation to germination the specifications are based on the use of ISTA methods. In the event that the seed does not meet the product specifications mentioned, ENZA will inform their customers.

### General Definitions

#### Normal Seed

In general normal seed has not been subjected to special processes. It is sold by weight and/or by count, depending on the product. Normal seed complies with the EEC-standards.

#### Precision Seed

Precision seed has been subjected to additional processes. It is of a uniform size and has high germination capacity. Precision seed is sold by count.

#### Priming

Priming is defined as an activation of the germination process in order to break seed dormancy or obtain a faster or more uniform emergence after sowing. Primed seed is sold by count.

#### Pill

Pill is the product of a seed pelleting/coating procedure. Pelleting is defined as the process of changing the seed form by covering it with filling materials with the main purpose to facilitate easier sowing. Also additional ingredients may be added. Pelleted seed is sold by count.

#### Enza Kote

Enza Kote is a filmcoating, a pigmented layer covering the seed. The original seed form remains intact. Additional ingredients may be added. Enza Kote with an insecticide is red colored. Enza Kote seed is sold by count.

#### Germination

The germination figure mentioned is valid from the moment of delivery. Germination figures refer to the ISTA-regulations.

#### Genetic Purity

Genetic purity is defined as the percentage of plants in a lot that meets the variety description.

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## Appendix 2 Resistances

(a) "Immunity": means not subject to attack or infection by a specified pest or pathogen.

(b) "Resistance" is 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:

(i) 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.

(ii) 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.

"Susceptibility" is the inability of a plant variety to restrict the growth and development of a specified pest or pathogen.

3. Resistances in varieties of our crops will be coded (see coding list at [www.enzazaden.com](http://www.enzazaden.com)), unless indicated otherwise. In case a variety is resistant to more than one pathogen, the individual resistance codes will be separated by the symbol "/".

(a) If in a resistance code of a certain variety reference is made to certain strains for which the resistance is claimed this means that no resistance is claimed to other strains of the same pathogen.

(b) If, in a resistance code, no reference is made to strains of the pathogen for which the resistance is claimed, resistance is claimed only to certain not further specified strains of the pathogen and we hereby disclaim any guarantee that the variety will not be infected by the said pathogen.