

Fall Creek Terms and Conditions for Plant Sales

Fall Creek 植株销售条款和条件

(Version No. [FCC_TC_2023], updated as of [June [16], 2023])

(版本号: **【FCC_TC_2023】**, 更新日期为 **【2023 年 6 月[16]日】**)

1. These terms and conditions for Plant Sales (the "Terms & Conditions" or the "T&Cs") are applicable to the Sales (as defined in below) by Yunnan Fu Rui Ke Biotechnology Co., Ltd. (云南富瑞科生物科技有限公司) ("Fall Creek") of the goods (the "Goods") indicated in the relevant Order Acknowledgements which contain express language accepting the governance of these Terms & Conditions (each, an "Order Acknowledgement"). Fall Creek wishes to sell the Goods indicated in the Order Acknowledgement to the Purchaser indicated in the applicable Order Acknowledgement (the "Purchaser") and the latter is willing to pay, for good and valuable consideration, the Purchase Price (as defined below) in accordance with Section 4 of these Terms & Conditions. Fall Creek and the Purchaser will be collectively referred to as "the Parties".

1. 本《植株销售条款和条件》(以下简称“《条款和条件》”或“T&Cs”)适用于云南富瑞科生物科技有限公司(Yunnan Fu Rui Ke Biotechnology Co., Ltd.)(以下简称“Fall Creek”)在相关《订单确认书》中销售(定义见下文)的货物(以下简称“货物”),《订单确认书》(每份均称为“《订单确认书》”)中有明确表示接受本《条款和条件》的管辖的表述。Fall Creek 希望将《订单确认书》中所述的货物销售给所适用的《订单确认书》中所述的买方(以下简称“买方”),买方愿意根据本《条款和条件》第 4 节的约定,以有效对价支付购买价格(定义见下文)。Fall Creek 和买方统称为“双方”。

As used in these Terms & Conditions:

本《条款和条件》中使用的术语:

“Sales” means the transaction of the Goods set forth in the applicable Order Acknowledgement between Fall Creek and the Purchaser, which is identified with an Order Acknowledgement number.

“销售”是指 Fall Creek 和买方签订的所适用的《订单确认书》中约定的货物交易,以《订单确认书》编号为标识号。

The Order Acknowledgement must be signed and provided to Fall Creek within ten (10) calendar days calculating from the date of receipt through e-mail by the Purchaser. As this document is an integral part of the Order Acknowledgement, these Terms & Conditions will be considered accepted

by the Purchaser under the following circumstances, even if this document is not signed by the Purchaser:

《订单确认书》必须在十（10）个日历日内签署并提交给 Fall Creek，自买方通过电子邮件收到之日起计算。由于本文件是《订单确认书》不可分割的一部分，在下述情况下，即使买方未签署本文件，也应视为买方已接受本《条款和条件》：

- i. if the Order Acknowledgement is signed by the Purchaser and provided to Fall Creek, personally or to Fall Creek's authorized email;
- i. 如果买方签署《订单确认书》，并亲自提交给 Fall Creek 或发送至 Fall Creek 的授权电子邮件地址；
- ii. if the Purchaser pays any amount indicated in the Order Acknowledgement and/or any invoice issued in connection with the Goods by Fall Creek; and/or
- ii. 如果买方支付《订单确认书》和/或 Fall Creek 开具的与货物相关的任何发票中指明的任何金额；和/或
- iii. if the Purchaser receives the Goods from Fall Creek.
- iii. 如果买方从 Fall Creek 收到货物。

The Purchaser acknowledges and agrees that the Goods supplied by Fall Creek to the Purchaser shall only be used to grow blueberry fruit for sales in mainland China and shall not be used for any other purpose whether for profit or not. The reproduction (multiplication) of the Goods is strictly forbidden. The Purchaser further agrees not to transfer the ownership of the Goods to any third parties, to alienate, to pledge or to encumber with no matter what privilege unless the Purchaser has obtained a written authorization from Fall Creek.

买方确认并同意，Fall Creek 向买方供应的货物只能用于种植在中国大陆销售的蓝莓水果，不得用于任何其他目的，不论是否以营利为目的。严禁复制（繁殖）货物。买方进一步同意，除非买方已获得 Fall Creek 的书面授权，否则不会将货物所有权转让给任何第三方，也不会转让、质押任何货物权利或対任何货物权利设置负担。

2. Manifestations of the Purchaser. The Purchaser states that: (1) it is an entity duly established and validly existing in accordance with the laws of its place of incorporation; (2) its representatives have the necessary powers of representation to formalize these Terms & Conditions and any other documents agreed between the Parties in connection with the Sales of Goods; and (3) the Terms &

Conditions along with any other document signed by the Purchaser and Fall Creek are binding upon the Purchaser in accordance with their terms.

2. 买方的声明。 买方声明：（1）买方是根据其注册地的法律正式成立并有效存续的实体；（2）其代表拥有必要授权，有权正式化本《条款和条件》以及双方约定的与货物销售有关的任何其他文件；以及（3）本《条款和条件》以及买方和 Fall Creek 签署的任何其他文件，根据其条款对买方具有约束力。

3. Single agreement on Terms & Conditions and possibility of modification. Fall Creek and the Purchaser may enter one or more separate written legal document(s) in connection with the Sales of Goods (the "Written Agreement", such as a framework agreement). Fall Creek and the Purchaser agree that for each specific Order Acknowledgement, the applicable Written Agreement, these Terms & Conditions and the Order Acknowledgement constitute the sole and entire conditions applicable to the Sales of the Goods under such Order Acknowledgement. In the event of any discrepancy between the provisions of the Written Agreement, the applicable version of these Terms & Conditions and the Order Acknowledgement, the following order of precedence shall apply: the Order Acknowledgement (highest priority), the Framework Agreement, and these Terms & Conditions (lowest priority).

3. 本《条款和条件》为单一协议，可以修订。 Fall Creek 和买方可签订一份或多份与货物销售相关的独立书面法律文件（以下简称“书面协议”，比如一份《框架协议》）。Fall Creek 和买方约定，对于每份特定的《订单确认书》而言，适用的书面协议、本《条款和条件》以及《订单确认书》应构成适用于该《订单确认书》项下货物销售的唯一且完整的条件。如果书面协议、适用版本《条款和条件》以及《订单确认书》中列明的约定之间存在任何差异，则应适用以下优先级顺序：《订单确认书》（最高优先级）、《框架协议》和本《条款和条件》（最低优先级）。

The Parties acknowledge and agree that Fall Creek is entitled to modify these Terms & Conditions at any time at its sole discretion. For the avoidance of doubt, for any specific Order Acknowledgement, the version number of the applicable Terms & Conditions will be indicated on such Order Acknowledgement; if the version number is not indicated on the Order Acknowledgement, the version of the Terms & Conditions that is valid on the date Fall Creek receives the Order Acknowledgement signed by the Purchaser shall apply to such Order Acknowledgement. It is the Purchaser's responsibility to visit Fall Creek's [<https://www.fallcreeknursery.com/commercial-fruit-growers/china>] to obtain and understand the applicable version of the Terms & Conditions; and signing and submitting an Order Acknowledgement to Fall Creek shall constitute the Purchaser's agreement to and acceptance of such applicable version of the Terms & Conditions in connection with such Purchaser Order.

双方确认并同意，Fall Creek 有权自行决定随时修改本《条款和条件》。为免生疑义，对于任何特定的《订单确认书》，应在该《订单确认书》上注明所适用的《条款和条件》的版本编号；如果《订单确认书》上未注明版本编号，则 Fall Creek 收到买方签署的《订单确认书》之日有效的《条款和条件》版本应适用于该《订单确认书》。买方有责任访问 Fall Creek 网站【<https://www.fallcreeknursery.com/commercial-fruit-growers/china>】，获取并了解适用版本的《条款和条件》；签署《订单确认书》并提交给 Fall Creek，应构成买方同意并接受该买方订单所适用的《条款和条件》版本。

4. Payment Terms. The purchase price is the price mentioned in the Order Acknowledgement (the "Purchase Price"). The Purchase Price is not subject to any contingency, deductions, compensations or withholdings, which must be paid by the Purchaser, if any. All prices are in Renminbi (RMB) and must be transferred in Renminbi (RMB) to the bank account of Fall Creek specified in the Order Acknowledgement or pro forma invoice(s) or invoice(s). Payment of the Purchase Price must be made within the payment terms as mentioned in the Order Acknowledgement, invoice(s) or pro forma invoice(s).

4. 付款条款。 购买价格是《订单确认书》中提到的价格（以下简称“购买价格”）。购买价格不受任何意外开支、扣减、补偿或预扣的影响，此类意外开支、扣减、补偿或预扣，如有，须由买方支付。所有价格均以人民币（RMB）计算，且必须以人民币（RMB）转账至《订单确认书》、形式发票、或发票中指定的 Fall Creek 银行账户。购买价格必须按《订单确认书》、发票、或形式发票中提及的付款条款进行支付。

The Purchaser shall not withhold any payment of any amounts due and payable by reason of any contingency, holdback, or set-off of any claim or dispute with Fall Creek.

买方不得以任何意外事件、障碍为由、或者以抵销向 Fall Creek 的任何索赔或与 Fall Creek 的任何争议为由，而扣留任何到期应付款项。

The Purchase Price does not include other costs associated with the Sales, such as transport, storage, phytosanitary requirements, or taxes, unless expressly indicated otherwise in the Order Acknowledgement. The aforementioned costs will be additionally paid by the Purchaser.

购买价格不包括与销售相关的其他成本，如运输、储存、植物检疫要求或税费，除非《订单确认书》中另有明确说明。上述费用将由买方另行支付。

Unless expressly stated otherwise, the delivery of the Goods by Fall Creek to the Purchaser is conditioned upon payment of the Purchase Price by the Purchaser in accordance with the terms as mentioned in the following Section 5 Deposit-interim payment and Section 6 Order Acknowledgement cancelation. In case of any delay in payment of the Purchaser Price, Fall Creek is

entitled to charge a delay fee for each month of the delay, calculated at the lower the lower rate of (i) 1% of the Purchase Price for each month of delay, and (ii) the maximum interest rate of private loan permitted under applicable law at the time the delayed payment was due, until the moment of full payment. Full payment of the Purchase Price before the Delivery Date (as defined in Section 7 hereunder) does not confer transfer of title, except where such provision is unlawful.

除非另有明确约定，否则 Fall Creek 向买方交付货物的前提条件是：买方根据以下第 5 节“定金——临时付款”和第 6 节“取消《订单确认书》”中提及的条款支付购买价格。如果逾期支付购买价格，Fall Creek 有权按月收取逾期费用，利率以下述较低者计算：(i) 每逾期一个月，支付购买价格的 1%，以及 (ii) 逾期款项应付之时适用法律允许的私人贷款最高利率，直至全额支付。在交货日期（定义见下文第 7 节）之前全额支付购买价格并不意味着所有权转移，除非根据相关法律规定该约定系不合法。

5. Deposit – interim payment. Fall Creek is entitled to require the making of a deposit from the Purchaser (the “Deposit”) pursuant to the schedule set forth at the applicable Order Acknowledgement or invoice, as down payment of the Purchase Price. The amount of the Deposit will be determined by Fall Creek at its sole discretion and shall be indicated in the applicable Order Acknowledgement, pro forma invoice(s) or invoice(s), if no amount is listed, the Deposit shall amount to 20% of the Purchase Price. Fall Creek may suspend its obligations towards the Purchaser until Fall Creek receives the Deposit indicated in the Order Acknowledgement. The Deposit is non-refundable unless otherwise agreed between the Parties.

5. 定金——临时付款。Fall Creek 有权要求买方根据适用《订单确认书》或发票中约定的时间表支付定金（以下简称“定金”），作为购买价格的首期付款。定金金额由 Fall Creek 自行决定，并应在适用的《订单确认书》、形式发票或发票中注明，如果未列出金额，则定金金额应为购买价格的 20%。在 Fall Creek 收到《订单确认书》上注明的定金前，Fall Creek 可暂停其对买方的义务。除非双方另有约定，否则定金不予退还。

Notwithstanding anything to the contrary in this document, any breach by the Purchaser that prevents Fall Creek’s the Sales of the Goods under the Order Acknowledgement will also enable Fall Creek to retain the entire Deposit as compensation for damages, without prejudice to the right to claim the Purchaser an additional amount in case the damages exceed the Deposit amount.

尽管本文件中有任何相反的约定，买方的任何违约行为，导致 Fall Creek 无法销售《订单确认书》项下的货物，则 Fall Creek 有权保留全部定金，作为损害赔偿金；但不影响 Fall Creek 在遭受的损失超过定金金额的情况下向买方索赔额外金额的权利。

6. Order Acknowledgement cancellation. The Purchaser acknowledges that Fall Creek will incur in expenses, allocate resources, and forego opportunities in reliance on the Order Acknowledgement

and the Purchaser's commitment to purchase the Goods. In case of cancelation of the Order Acknowledgement, or modifications which result in a decrease in the quantity of the Goods, Fall Creek may retain the entire Deposit and will be entitled to a cancelation fee to the extent permitted by applicable PRC law, both as compensation for damages. The cancelation fee shall be determined as follows:

6. 取消《订单确认书》。买方确认，Fall Creek 将因依赖《订单确认书》和买方承诺购买货物而产生相关开支、分配资源和放弃其他机会。如果取消《订单确认书》，或修改《订单确认书》导致货物数量减少，则 Fall Creek 有权保留全部定金，并有权在适用的中国法律允许的范围内收取取消费用，定金及取消费用均作为损害赔偿金。取消费用应按以下方式确定：

Time of cancelation/modification	Cancelation/modification fee
取消/修改时间	取消/修改费用
Cancelation before Lock-In Date*	20% of the Purchase Price
锁定日期前取消*	购买价格的 20%
Modification before Lock-In Date*	25% of the Purchase Price corresponding to the removed Goods
锁定日期前修改*	被移除货物相应购买价格的 25%
Cancelation after Lock-In Date*	Full Purchase Price
锁定日期后取消*	购买价格全款
Modification after Lock-In Date*	Full value of the Purchase Price corresponding to the removed Goods
锁定日期后修改*	被移除货物相应购买价格的全部价值

****Lock-In Date to be defined in Order Acknowledgement****

****锁定日期将在《订单确认书》中定义****

7. Delivery Date. Delivery will occur at a date agreed upon by the Purchaser and Fall Creek, or absent an agreed date, when Fall Creek notifies the Purchaser the Goods are available at its facility (such agreed date or date of notification is hereinafter referred to as the "Delivery Date"). If a

Delivery Date is set forth in an Order Acknowledgement, it is provided for the Purchaser's information only.

7. 交货日期。交货会在买方和 Fall Creek 约定的日期进行，如未约定日期，则根据 Fall Creek 通知买方货物已到其场所可取之日交货（该商定日期或通知日期在下文中称为“交货日期”）。如果《订单确认书》中约定了交货日期，则该日期仅供买方参考。

DELIVERY DATES ARE ONLY ESTIMATES AND ARE NOT A DEADLINE. THE AVAILABILITY OF THE GOODS IS SUBJECT TO CROP CONDITIONS AND/OR ERRORS IN COUNT.

交货日期仅为预计日期，并不是截止日期。货物的可用性受植株条件和/或计数误差的影响。

8. Delivery. The Incoterm applicable to the Order Acknowledgement will be FCA (Incoterms, 2020), being the place of delivery the facilities of Fall Creek, which address will be provided well in advance of the Delivery Date, save otherwise agreed by the Parties at the moment of delivery of the plants. Delivery may take place in more than one shipment. Under FCA, the risk of loss of the Goods passes to Purchaser when the Goods are loaded on the means of transport provided by the Purchaser (the “Carrier”) at Fall Creek facilities. The Purchaser must directly claim the Carrier for any damage that the Goods may suffer during transport. If the Purchaser for any reason fails to pick up the Goods:

8. 交货。除非双方在交付植株之时另有约定，适用于《订单确认书》的国际贸易术语为货交承运人（FCA）（《2020 年国际贸易术语解释通则》），交货地点为 Fall Creek 场所，详细地址将在交货日期前提供。货物可能分多批交付。根据货交承运人（FCA）条款，当货物在 Fall Creek 场所被装到买方提供的运输工具（以下简称“承运人”）时，货物损失的风险转移给买方。运输过程中，货物如遭受任何损害，则买方必须直接向承运人索赔。如果买方因任何原因未能提取货物：

i. within fifteen (15) calendar days from the Delivery Date, Fall Creek may charge the Purchaser reasonable storage and stocking costs for the Goods, all at the expense and risk of the Purchaser, or

i. 自交货日期起十五（15）个日历日内，Fall Creek 可向买方收取合理的货物储存和库存费用，所有费用和 risk 由买方承担，或

ii. within thirty (30) calendar days from the Delivery Date, Fall Creek may dispose of the Goods as it sees fit with no further liability; and in either case, the Purchaser shall not be released from its obligations set forth in these Terms & Conditions, especially the payment of the Purchase Price.

ii. 自交货日期起三十（30）个日历日内，Fall Creek 可以按照其认为合适的方式处置货物，而无需承担进一步的责任；在任何一种情况下，买方都不能免除其在本《条款和条件》中约定的义务，尤其是支付购买价格。

The Purchaser agrees that within ten (10) calendar days after the Delivery Date (the “Inspection Period”), the Purchaser must:

买方同意，在交货日期后十（10）个日历日内（以下简称“检验期”），买方必须：

1) Inspect the Goods, and, where relevant,

1) 检验货物，并在相关的情况下，

2) Notify Fall Creek, in writing, if all or any portion of the Goods fail to conform with the Warranty or are nonconforming with the Order Acknowledgement. Claims shall be made as prescribed in Section 11 (Warranty).

2) 如果全部货物或其任何部分不符合保证条款或不符合《订单确认书》，买方应以书面形式通知 Fall Creek。应按照第 11 节（保证条款）的约定进行索赔。

For shipments outside China (solely for the purpose of these Terms & Conditions, exclusive of the Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan), the Inspection Period will commence on the date the Goods arrive at the Purchaser’s premises. Failure to object within the Inspection Period will be a waiver of any claim against Fall Creek for a nonconformance that could have been discovered upon a reasonable inspection.

对于中国境外发送的货物（仅为本《条款和条件》之目的，不包括中国香港特别行政区、澳门特别行政区和中国台湾地区），检验期将从货物到达买方场所之日开始计算。如未在检验期内提出异议，则视为放弃针对 Fall Creek 就任何不符合项（该等不符合项是经过合理检验即可以发现的）提出任何索赔。

9. ProRata Adjustment. If Fall Creek is unable to fulfil an Order Acknowledgement because of a Force Majeure Event, or if for any reason Fall Creek delivers a quantity of the Goods that is incorrect but is within 5% of the quantity of such Goods ordered under the Order Acknowledgement, the Purchaser’s sole and exclusive remedy shall be the ProRata Adjustment. Purchaser shall not be entitled to object to or reject the Goods in their entirety, or any portion thereof, by reason of the surplus or shortfall. “ProRata Adjustment” means the Purchase Price under the Order Acknowledgement will be adjusted to reflect the aggregate Purchase Price for the Goods actually delivered.

9. 按比例调整。如果 Fall Creek 因不可抗力事件而无法履行《订单确认书》，或者如果 Fall Creek 因任何原因交付的货物数量有误，但错误数量在《订单确认书》订购的货物数量 5% 以内，那么买方的唯一救济措施应为按比例调整。买方无权以过量或短缺为由反对或拒绝全部或部分货物。“按比例调整”是指《订单确认书》下的购买价格将调整，以反映实际交付货物的总购买价格。

10. Force Majeure. Neither Party shall be held liable to the other Party nor be deemed to have defaulted under or breached the Terms & Conditions for failure or delay in fulfilling or performing any term of the Terms & Conditions to the extent, and for so long as, such failure or delay results from causes beyond the reasonable control of the Affected Party (as defined below) including but not limited to fire, floods, embargoes, pandemics, epidemics, diseases or public health emergencies, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority (the “Force Majeure Event”).

10. 不可抗力。如果任一方未能履行或延迟履行是由受影响方（定义见下文）无法合理控制的原因造成的，包括但不限于火灾、洪水、禁运、流行病、疾病或突发公共卫生事件、战争、战争行为（无论宣战与否）、恐怖主义行为、叛乱、暴动、内乱、罢工、停工或其他劳工骚乱、天灾或任何政府机构的行为、疏忽或延迟（以下简称“不可抗力事件”），则该方不应向另一方承担责任，也不应视为因未能履行或延迟履行本《条款和条件》中的任何条款而违反本《条款和条件》。

The Party invoking this Section (the “Affected Party”) must provide a written notice (“Force Majeure Notice”) to the other Party which describes in reasonable detail:

援引本条款的一方（以下简称“受影响方”）必须向另一方提供书面通知（以下简称“不可抗力通知”），以合理的详细程度描述：

1. The Force Majeure Event;

1. 不可抗力事件；

2. The provisions of the Terms & Conditions and the Affected Party’s performance that are impacted by the Force Majeure Event; and

2. 受不可抗力事件影响的《条款和条件》中的约定以及受影响方的履行情况；以及

3. The relief requested by the Affected Party.

3. 受影响方要求的救济措施。

The Force Majeure Notice must be delivered within 10 calendar days of the Affected Party's knowledge that its performance will be impacted by the Force Majeure Event giving rise to the Affected Party's request for relief. The Affected Party shall use commercially reasonable efforts to minimize the effect of the Force Majeure Event on its performance obligations.

如果受影响方知悉其履约将受不可抗力事件影响，且需要请求救济，则不可抗力通知必须在受影响方知悉之日起 10 个日历日内送达。受影响方应尽商业上合理的努力，将不可抗力事件对其履约义务的影响降至最低。

In response to a Force Majeure Notice given by:

就不可抗力通知的应对：

a) Purchaser: Fall Creek may, upon consultation and coordination with the Purchaser in good faith, suspend, delay, or modify the Purchaser's obligations so long as the Force Majeure Event continues and until the Purchaser can perform. If the Force Majeure Event exceeds the period of one calendar year since the Force Majeure Notice was given or the obligations hereunder become impossible to fulfil, the Parties shall terminate the effects of the Sales.

a) 对于买方发出的不可抗力通知：如果不可抗力事件持续，Fall Creek 可以在与买方真诚协商和协调的基础上暂停、延迟或修改买方的义务，直到买方能够履约为止。如果自不可抗力通知发出后，不可抗力事件超过一个日历年，或本文件项下的义务变得无法履行，则双方应终止销售的效力。

b) Fall Creek: Any Order Acknowledgement shall be subject to a "ProRata Adjustment" in accordance with Section 9 of these Terms & Conditions.

b) 对于 Fall Creek 发出的不可抗力通知：任何《订单确认书》都应根据本《条款和条件》第 9 节的约定受制于“按比例调整”。

Under the circumstances caused by a Force Majeure Event, neither Fall Creek nor the Purchaser will be liable for any damages.

对于因不可抗力事件导致的任何情形，Fall Creek 和买方均不对任何损害承担责任。

Unless expressly indicated otherwise, the Parties agree that neither the occurrence of a Force Majeure Event or the delivery of a Force Majeure Notice will entitle Purchaser to a refund of any Deposit or other payment already made to Fall Creek, which amounts may be retained by Fall Creek in compensation for the resources expended and opportunities foregone by Fall Creek prior to such notice, nor will such conditions entitle the Purchaser to suspend payment to Fall Creek for the Goods already delivered.

除另有明确说明外，双方同意，买方无权因不可抗力事件的发生或不可抗力通知的送达，而要求退回已向 Fall Creek 支付的任何定金或其他款项，这些款项应由 Fall Creek 保留，以补偿 Fall Creek 在发出此类通知之前所消耗的资源 and 放弃的机会；并且此类情况不应赋予买方可以暂停向 Fall Creek 支付已交付货物的款项的权利。

11. Warranty: Fall Creek warrants that at the time of delivery, the Goods will be:

11. 保证条款: Fall Creek 保证，在交货时，货物将：

a) true-to-type;

a) 保持原种特点；

b) as described in the “item description” section of invoice/Order Acknowledgement; and

b) 如发票/《订单确认书》的“商品描述”部分所述；以及

c) visibly free of pests and diseases

c) 肉眼可见地没有病虫害

(collectively, the "Warranty").

（统称为“保证”）。

The Warranty does NOT cover an estimation of plant growth or fruit production. The Purchaser acknowledges that the Goods include living organisms that are subject to unpredictable behavior and vulnerability to changing conditions.

本保证不包括对植物生长或水果产量的估计。买方确认，货物中包含活生物体，易受不可预测的行为和条件变化的影响。

Following the delivery as prescribed in Section 8 Delivery, any act or omission of the Purchaser or its agents that damages the Goods voids the Warranty.

按照第 8 节“交货”中的约定交货后，因买方或其代理人的作为或不作为而损坏货物，将导致本保证失效。

The Purchaser acknowledges that its decision to sign the Order Acknowledgement has not been based on any oral or implicit statement of any kind made by Fall Creek in relation to the Goods, other than those contained in the Order Acknowledgement or the present Terms & Conditions. In case of breach of the Warranty, the Purchaser will only have one of the following options, that Fall Creek will decide: (1) the replacement by Fall Creek, at its expense, of the non-conforming Goods; or (2) the return of the part of the Purchase Price corresponding to the defective Goods, provided that the Purchaser notifies Fall Creek in writing of its disagreement with the Goods within the Inspection Period. Claims must be made in writing to the address of Fall Creek, to the attention of its legal department, and must identify properly and sufficiently the claimed Goods and attach enough photos corresponding to damages and/ or defects in the same. Accuracy and sufficiency of the information will be evaluated at the sole discretion of Fall Creek. Fall Creek reserves the right to inspect the allegedly defective Goods, being authorized to access the Purchaser's premises for this purpose. The Purchaser may be required to return the allegedly defective Goods to Fall Creek at its own cost.

买方确认，除了《订单确认书》或当前版本《条款和条件》中包含的声明外，其签署《订单确认书》的决定并非基于 Fall Creek 就货物所做的任何口头或暗示声明。如 Fall Creek 违反保证，买方只有以下选择之一，由 Fall Creek 决定：（1）由 Fall Creek 自费更换不合格货物；或（2）退回与缺陷货物相对应的那部分购买价格，前提是买方在检验期内书面通知 Fall Creek 其不同意接受该货物。索赔必须以书面形式提交至 Fall Creek 地址，收件人为法务部，并且必须正确、充分地标识索赔货物，并附上充足的与货物损坏和/或缺陷相对应的照片。Fall Creek 将全权评估信息的准确性和充分性。Fall Creek 保留检验所声称的有缺陷货物的权利，并有权为此进入买方的场所。买方可能需要自费将所声称的有缺陷货物返还给 Fall Creek。

EXCEPT AS PROVIDED FOR ABOVE, FALL CREEK MAKES NO EXPRESS OR IMPLIED WARRANTIES CONCERNING THE GOODS, ANY ADVISING TO THE PURCHASED GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER OR FURTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, AND USAGE OF TRADE ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

除上述约定外，FALL CREEK 不对货物作任何明示或暗示的保证，也不对已购货物提出任何建议，包括对适销性或特定用途适用性的任何保证。并且 FALL CREEK 明确否认和排除

所有其他或进一步保证，包括任何适销性、不侵权、特定用途适用性、交易过程和贸易惯例的保证。

12. Financial warranties: If Fall Creek, at any time, has doubts about the financial capacity of the Purchaser or about its ability to meet the obligations arising from the Order Acknowledgement, Fall Creek may require security for payment obligations of the Purchaser, such as bank guarantee or letter of credit. Fall Creek reserves the power to suspend the execution of the Order Acknowledgement until such security has been granted.

12. 财务保证：在任何时候，如果 Fall Creek 对买方的财务能力或其履行《订单确认书》所产生义务的能力有所怀疑，Fall Creek 可以要求买方提供付款义务担保，如银行保函或信用证。Fall Creek 保留暂停执行《订单确认书》的权利，直到此类担保获得批准。

13. Fulfilment of obligations. Purchaser shall be in default if Purchaser notifies Fall Creek that Purchaser refuses to accept the delivery of all or any portion of the Goods, fails to pay to Fall Creek the Deposit, the full Purchase Price, or any additional amounts that become due to Fall Creek for any other reason, or otherwise breaches these Terms & Conditions.

13. 履行义务。如果买方通知 Fall Creek，买方拒绝接受全部或任何部分交付的货物，未能向 Fall Creek 支付定金、全部购买价格或因任何其他原因应付给 Fall Creek 的任何额外金额，或违反本《条款和条件》，则买方违约。

Upon default by the Purchaser, Fall Creek may, at its sole discretion: (1) withhold the Goods until the default is cured; (2) declare the entire balance of the Purchase Price to be immediately due and payable; (3) cease performance until the default is cured; (4) require the Purchaser to pay the amounts in default and the advance payment of any outstanding amount that Fall Creek deems reasonable; (5) require from the Purchaser a bond or letter of credit from a third Party in favor of Fall Creek, in a form that is acceptable to Fall Creek and in an amount which covers the part of the Purchase Price pending payment; (6) terminate the Written Agreement (if any), this Terms & Conditions and any Purchaser Order that has not yet been performed, retaining the entire Deposit as damages and reserving the right to claim actual damages from the Purchaser if these exceed the amount given in the Deposit.; and (7) exercise any of the legal actions for which Fall Creek is entitled . The above options are cumulative and not exclusive, to the extent legally possible.

买方违约时，Fall Creek 可自行决定：（1）扣留货物，直至买方的违约得到纠正；（2）宣布购买价格的全部余款立即到期应付；（3）停止履约，直至买方的违约得到纠正；（4）要求买方支付违约额以及 Fall Creek 认为合理的任何未付金额的预付款；（5）要求买方提供以 Fall Creek 为受益人的第三方保函或信用证，其形式为 Fall Creek 可接受的形式，金额含盖待付款的购买价格部分；（6）终止书面协议（如有）、本《条款和条件》以及任何尚未履行的买方订

单，保留全部定金，作为损害赔偿金，并且，如果实际损害超过定金金额，则有权向买方索赔实际损害赔偿金；以及（7）行使 Fall Creek 有权采取的任何法律行动。在法律允许的范围
内，上述选择是可累积的，而不是排他性的。

14. Limitations of Liability: Irrespective of the nature or legal basis of any claim, the liability of Fall Creek shall be limited, in any case, to the Purchase Price. Fall Creek might only be liable for direct damages arising from the Sales of Goods. Fall Creek shall have no liability (whether in contract, tort or otherwise) for any consequential loss, indirect loss, and pure economic loss which shall be deemed to include, among other things, loss of or damage to revenue, loss of profits, loss of savings, and loss due to business interruption.

14. 责任限制：无论任何索赔的性质或法律依据如何，Fall Creek 的责任在任何情况下都仅限于购买价格。Fall Creek 应只对货物销售产生的直接损害负责。Fall Creek 不对任何包括收入损失或损害、利润损失、储蓄损失和因业务中断造成的损失等在内的后果性损失、间接损失和纯经济损失承担任何责任（无论是在合同、侵权还是其他方面）。

15. Indemnity: The Purchaser agrees to indemnify and hold Fall Creek, its respective affiliates, and their respective shareholders, officers, directors, members, managers, employees, agents, successors, and assigns (collectively, the “Indemnified Parties”) harmless from, and will reimburse the Indemnified Parties for, all Losses (as defined below), which Fall Creek incurred, arising out of the Purchaser or a third-Party breach or threatened breach of these Terms & Conditions.

15. 赔偿：买方同意对 Fall Creek、其各关联方以及它们各自的股东、高级职员、董事、成员、经理、员工、代理人、继承人和受让人（统称为“受偿方”）因为买方或第三方违反或可能违反本《条款和条件》而导致 Fall Creek 遭受的所有损失（定义见下文）进行赔偿并使其免受损害，并将补偿受偿方。

For purposes of this Section, “Losses” means all suits, losses, liabilities, damages, awards, claims, penalties, fines, settlements, costs and expenses, including reasonable attorney fees incurred at any level of legal proceedings or arbitration, and the costs of enforcing any right to indemnification under the Terms & Conditions and the cost of pursuing any insurance providers. The indemnity obligations set forth in this Section shall survive upon expiration or termination of the Terms & Conditions for a period equivalent to the status of limitation under applicable Chinese law. Reasonable attorney fees will be 15% of claim amount.

就本节而言，“损失”是指所有诉讼、损失、责任、损害、裁决、索赔、罚款、罚金、和解、成本及开支，包括在任何级别的法律诉讼或仲裁中发生的合理律师费，以及根据本《条款和条件》行使任何赔偿权利的费用和寻求任何保险公司理赔的费用。本节约定的赔偿义务在本

《条款和条件》到期或终止后仍然有效，有效期限以适用的中国法律规定的期限为准。合理的律师费应是索赔金额的 15%。

16. Confidentiality: Any and all information in any form or medium, tangible or intangible, which has commercial value and which a Party (the "Disclosing Party") possess or to which the Disclosing Party has rights, regardless of whether it is specifically labelled as "confidential", or whether it is disclosed to the other Party (the "Receiving Party") by the Disclosing Party or by any third party, are collectively referred to as the "Confidential Information" of the Disclosing Party. It is understood and agreed by the Parties that the Receiving Party may obtain information of an affiliated company, customer, vendor, or other business partner, or prospective business partner of the Disclosing Party (the "Third Party Information"). Any and all Third Party Information provided by the Disclosing Party shall be considered to be "Confidential Information" hereunder and subject at all times to the confidentiality and non-use provisions hereof.

16. 保密性：一方（以下简称“披露方”）拥有或披露方对其享有权利的任何形式的或在任何媒介中的、有形或无形的、具有商业价值的任何及全部信息，无论是否被明确标记为“保密”，或是否由披露方或任何第三方披露给另一方（以下简称“接收方”），统称为披露方的“保密信息”。双方理解并同意，接收方可能获得披露方的关联公司、客户、供应商或其他业务伙伴或潜在业务伙伴的信息（以下简称“第三方信息”）。披露方提供的所有第三方信息应被视为本文件项下的“保密信息”，并始终受本文件的保密条款和不使用条款的约束。

Confidential Information includes, by way of example and without limitation to: information concerning the Disclosing Party's specific manner of doing business; the processes, methods and techniques utilized by the Disclosing Party; the Disclosing Party's customers, licensors, marketing strategies and plans, pricing information, sources of supply and material specifications; the Disclosing Party's breeding methodology, plans and strategies, its use of certain genetics, heritability of certain traits, and selection criteria; the Disclosing Party's breeding software and other computer programs, system documentation, special hardware, related software development; and the Disclosing Party's business models, manuals, formulations, equipment, compositions, configurations, know-how, ideas, improvements and inventions.

保密信息包括，举例来说，但不限于：关于披露方具体经营方式的信息；披露方使用的流程、方法和技术；披露方的客户、许可方、营销策略和计划、定价信息、供货来源和材料规格；披露方的育种方法、计划和策略，其对某些遗传学、某些性状的遗传性和选择标准的使用；披露方的育种软件和其他计算机程序、系统文档、特殊硬件、相关软件开发；以及披露方的商业模式、手册、配方、设备、成分、配置、专有技术、创意、改进和发明。

Confidential Information shall exclude information that, as the Receiving Party can demonstrate by reasonably detailed written documentation, (i) was independently developed by the Receiving Party

without any use of or access to the disclosing Party's Confidential Information; (ii) became known to the Receiving Party, without restriction, from a source (having a right to disclose such information) other than the Disclosing Party without breach of these Terms & Conditions or any other agreement having binding effects on it; (iii) was generally available in the public domain at the time it was disclosed or enters the public domain through no act or omission of the Receiving Party; (iv) was rightfully known by the Receiving Party, without restriction, at the time of disclosure; or (v) was approved for disclosure by the Disclosing Party beforehand and in writing.

保密信息不包括接收方能够通过合理详细的书面文件证明的以下信息：(i) 接收方在未使用或未接触披露方保密信息的情况下独立开发的信息；(ii) 在不违反本《条款和条件》或对其具有约束力的任何其他协议的情况下，接收方从披露方以外的来源（有权披露此类信息的来源）知晓且不受限制的信息；(iii) 在披露时已为公众所知、或并非因接收方的作为或不作为而进入公众领域的信息；(iv) 接收方在披露时已合法知晓且不受限制的信息；或 (v) 披露方事先以书面形式批准的披露信息。

All Confidential Information shall be treated by the Receiving Party as strict secret and confidential and shall only be used for the purpose of the Receiving Party's performance of its obligations hereunder. Except with express written consent from the Disclosing Party, the Receiving Party shall not disclose the Confidential Information to (or allow the Confidentiality Information to be disclosed to) any person, except that the Receiving Party may disclose the Confidential Information or portions thereof to its Representatives who have a need-to-know basis in order to perform activities specifically requested by the Receiving Party, solely in order to fulfil the Purpose. The Receiving Parties undertake to inform each of such Representatives of the confidential and proprietary nature of the Confidential Information and will direct such Representative to comply with the confidentiality and non-use terms of this Agreement as if he or she were a Party to it. A Receiving Party shall be responsible for any violations of the confidentiality and non-use provisions hereof by its Representatives, and the Receiving Party shall, at its sole expense, take commercially reasonable measures (including but not limited to court proceedings) to restrain its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information. The term "Representative" means, as to any Party, such Party's affiliates and its and their directors, officers, employees, agents, partners, committee members, advisors (including, without limitation, financial advisors, legal counsel and accountants), potential financing sources, and their respective representatives, but only to the extent such persons actually receive Confidential Information from the Receiving Party or at its direction.

接收方应将所有保密信息视为绝密和保密信息，并应仅用于接收方履行其在本文件项下的义务。除非获得披露方的明确书面同意，否则接收方不得向任何人披露保密信息（或允许他人向任何人披露保密信息），但接收方的代表为了实施接收方特别要求的活动（仅可出于此类目的）有必要了解相关保密信息，而向接收方代表披露保密信息或部分保密信息的除外。接收

方承诺，会将保密信息的保密和专有性质告知每一位此类代表，并指示该代表遵守本协议的保密条款和不使用条款，如同其是本文件的一方。接收方应对其代表违反保密条款和不使用条款的行为负责，接收方应自行承担费用，采取商业上合理的措施（包括但不限于法庭诉讼）限制其代表实施被禁止的或未经授权的披露或者使用保密信息。就任何一方而言，术语“代表”是指该方的关联方及其董事、高级职员、雇员、代理人、合伙人、委员会成员、顾问（包括但不限于财务顾问、法律顾问和会计师）、潜在融资来源及其各自的代表，但仅限于此类人员实际从接收方或按照接收方的指示接收的保密信息。

If the Receiving Party or any of its Representatives become legally required, requested or compelled to disclose any of the Confidential Information pursuant to a lawful requirement or request of a government agency, an order of court of competent jurisdiction or any tribunal or commission, pursuant to applicable law, rule, regulation or by the rules of any stock exchange, the Receiving Party shall, to the extent legally permissible and practical under the circumstances, provide the Disclosing Party with prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy, at the Disclosing Party's sole expense.

根据政府机构的合法要求或请求、具有司法管辖权的法院、仲裁庭或委员会的命令、适用法律、规范、法规或任何证券交易所的规则，如果接收方或其任何代表被依法要求或被强制披露任何保密信息，接收方应在法律允许和实际可行的情况下，向披露方及时提供关于该要求的事先书面通知，以便披露方可以寻求保护令或其他适当的救济措施，费用则由披露方自行承担。

The obligations under this Section 16 shall survive termination of these Terms & Conditions.

本第 16 节项下的义务在《条款和条件》终止后仍然有效。

17. Distinctive signs and intellectual property protection: Most Fall Creek's products, including individual plants of certain varieties, may be covered by one or more forms of intellectual property protection, including without limitation, plant patent, utility patents, plant breeder rights, or trademarks ("IP Rights"). The Purchaser is not entitled to use the trademarks, commercial names, or any distinctive sign registered or not registered of Fall Creek or its related companies and/or any other IP Rights over said distinctive signs, without their express written consent. In this regard, the Purchaser acknowledges that it does not have and that the Order Acknowledgement does not grant it any right, title, or interest in said trademarks, commercial names, distinctive signs or IP Rights.

17. 独特标志和知识产权保护：Fall Creek 的大多数产品，包括特定品种的个别植株，可能受到一种或多种形式的知识产权保护，包括但不限于植物专利、实用专利、植物育种者权利或商标（以下简称“知识产权”）。未经 Fall Creek 或其相关公司的明确书面同意，买方无权使用他们的商标、商业名称或任何已注册或未注册的独特标志和/或上述独特标志的任何其他知

识产权。在这方面，买方确认其不拥有且《订单确认书》未授予其对上述商标、商业名称、独特标志或知识产权的任何权利、所有权或权益。

Regarding the plant variety rights on the Goods, the Purchaser is specifically prohibited from reproducing, propagating, breeding, selling, or transferring any Goods that are subject to IP Rights and are sold by Fall Creek pursuant to the Terms & Conditions, unless otherwise authorized in writing.

就货物的植物品种权而言，除非另有书面授权，否则严禁买方繁殖、传播、培育、出售或转让任何受制于知识产权且由 Fall Creek 根据本《条款和条件》销售的货物。

Furthermore, in the event the Purchaser has actual or suspected knowledge of a third Party who commits an unauthorized act in violation of Fall Creek's IP Rights, the Purchaser will immediately report such act to Fall Creek.

另外，如果买方实际知道或怀疑第三方实施了侵犯 Fall Creek 知识产权的未授权行为，买方应立即向 Fall Creek 报告此类行为。

In addition, if the Purchaser is using a third Party to grow the Goods, the Purchaser must execute an end grower agreement with such third Party for the Goods included in the Order Acknowledgement provided by Fall Creek. The Purchaser acknowledges this additional obligation and agrees to sign one or more end grower agreements as and when requested by Fall Creek and comply with the terms of such agreements.

此外，如果买方使用第三方来种植货物，买方必须就 Fall Creek 提供的《订单确认书》中包含的货物，与该第三方签订最终种植者协议。买方认可这一额外义务，并同意在 Fall Creek 要求时签署一份或多份最终种植者协议，并遵守此类协议的条款。

18. Data Protection: In accordance with the provisions of applicable PRC laws and regulations in connection with protection of personal data, the Purchaser's data will be processed by Fall Creek in order to meet the commitments arising of the execution of the Order Acknowledgement, to respond to the Purchaser's queries and for electronic transmission of commercial information with regard to Fall Creek's products or services similar to the ones included in the Order Acknowledgement , including invitations to events related to them. The legitimacy of said data processing is the existing Order Acknowledgement, Fall Creek's compliance with its legal obligations, the legitimate interest and, where appropriate, the relevant individual's consent (for the avoidance of doubt, Purchaser is responsible to obtain the appropriate and sufficient consent from its personnel). Such data will be treated in accordance with the existing regulations regarding the protection of personal data, with the treatment being carried out by Fall Creek in a lawful, loyal, transparent, adequate, relevant, limited,

accurate and updated manner, and will be maintained for as long as the corresponding legal relationship exists, or as long as it may be necessary to comply with the legal requirements. The personal data of the Purchaser's personnel may be transferred to other companies in the Fall Creek's affiliates which are located outside of China, as well as to other persons or entities authorized to treat them, with the aforementioned purpose, and provided that said persons or entities guarantee compliance with the regulations and existing obligations regarding the protection of personal data, and, in particular, those provided for in the Personal Information Protection Law of China, Data Security Law of China, Cybersecurity Law of China, Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (General Data Protection Regulation). The Purchaser can exercise its rights of information, access, rectification, deletion, limitation of treatment, portability, opposition and not to be subject to a decision based solely on automated processing by request addressed to the following email address: dataprotection@fallcreeknursery.com.

18. 数据保护：根据与个人数据保护相关的所适用的中国法律法规的规定，为履行因签署《订单确认书》而产生的承诺、答复买方的垂询、并以电子方式传输与《订单确认书》所含产品或服务类似的 Fall Creek 产品或服务的商业信息（包括相关活动的邀请），买方的数据将由 Fall Creek 处理。所述数据处理的合法性在于当前的《订单确认书》、Fall Creek 遵守其法律义务、合法权益以及相关个人的同意（为免生疑义，买方负责从其人员处获得适当且充分的同意）。Fall Creek 将以合法、忠实、透明、充分、相关、有限、准确和最新的方式，根据现有的个人数据保护法规处理此类数据，并在相应的法律关系存在期间或符合法律要求的必要期间保留此类数据。出于上述目的，买方人员的个人数据可能被传输到位于中国境外的 Fall Creek 关联方范围内的其他公司，以及被授权处理这些数据的其他个人或实体，前提是上述个人或实体保证遵守有关个人数据保护的法规和现有义务，特别是《中国个人信息保护法》、《中国数据安全法》、《中国网络安全法》、欧洲议会和理事会 2016 年 4 月 27 日的（EU）2016/679 号（《通用数据保护条例》）中所规定的。买方可通过向以下电子邮件地址发送请求 dataprotection@fallcreeknursery.com，行使知情权、访问权、纠正权、删除权、限制处理权、可携带权、反对权、以及不受仅基于自动处理的决定的影响的权利。

If the Purchaser considers that its rights have not been duly taken care of, the Purchaser may contact the corresponding control authority.

如果买方认为其权利没有得到应有的保护，买方可以联系相应的监管机构。

19. General.

19. 通用条款。

1) Notice. All notices and other communications under these Terms & Conditions must be in writing and sent by email to the other Party's email address as may be specified by such party in

writing in accordance with this Section. Notice shall be deemed to be delivered at the time when the email was sent and shall come into effect upon delivery.

1) **通知。**本《条款和条件》下的所有通知和其他通信必须采用书面形式，并通过电子邮件发送到另一方根据本节以书面形式指定的电子邮件地址。通知在电子邮件发出时视为送达，并在送达时生效。

2) **Severability:** If all or part of any section of these Terms & Conditions is declared null or void, the rest of its sections will not be affected and will be valid and applicable to the extent permitted by law.

2) **可分割性：**如果本《条款和条件》的任何章节的全部或部分被宣布为无效，剩余的章节应不受影响，并应在法律允许的范围内有效且适用。

3) **No third-Party beneficiary.** Nothing in these Terms & Conditions, express or implied, is intended or may be construed to confer on any person, other than the Parties, any right, remedy, or claim under or with respect to these Terms & Conditions.

3) **无第三方受益人。**本《条款和条件》中无论是明示或暗示的任何内容，都无意或不得解释为向双方以外的任何人授予根据本《条款和条件》或就本《条款和条件》提出的任何权利、救济或索赔。

4) **Interdict or Other Equitable Relief.** The Parties agree that the remedy at law for any breach or threatened breach by a Party of any of the provisions of these Terms & Conditions may, by its nature, be inadequate, and that in addition to damages, the other Party will be entitled, including on an urgent basis, to a restraining order, temporary and permanent injunctive or interdict relief, specific performance, and other appropriate equitable relief, in any competent court having jurisdiction over the Purchaser, without showing or proving that any monetary damage has been sustained.

4) **禁令或其他衡平救济。**双方同意，对一方违反或可能违反本《条款和条件》的任何约定的法律救济就其性质而言可能是不充分的，除了损害赔偿之外，另一方应有权，包括在紧急情况下，在对买方拥有管辖权的任何有管辖权的法院获得限制令、临时和永久禁令或禁令救济、强制履行和其他适当的衡平法救济，而无需表明或证明遭受了任何金钱损失。

5) **Applicable law and jurisdiction:** The PRC law will govern the Sales. The Purchaser agrees that in case of any discrepancy in connection with these Terms & Conditions, it will be resolved through the courts of the city where Fall Creek is based, expressly waiving any other jurisdiction that may be applicable.

5) 适用法律和管辖权：中华人民共和国法律将管辖销售。买方同意，如果就本《条款和条件》而言存在任何不一致意见，应通过 Fall Creek 所在城市的法院解决，买方明确放弃任何其他可能适用的管辖权。

IN WITNESS WHEREOF, the Purchaser has caused these Terms & Conditions to be executed by its duly authorized representatives on the Effective Date.

特此证明，买方的正式授权代表于生效日期签署本《条款和条件》。

Purchaser: [•] (Company Stamp)

买方：【•】（公司盖章）

Signed by: _____

签署人：_____

Authorized Representative: [•]

授权代表：【•】