

AGREEMENT BETWEEN BUYER AND MISSOURI STATE FRUIT EXPERIMENT STATION

THIS AGREEMENT is made this _____ day of _____ 2009_____

Between _____ (“Buyer”) and the Missouri State University in behalf of its Missouri State Fruit Experiment Station (MSFES) WHEREAS, MSFES agrees to provide for the propagation and distribution of grapevines at the MSFES and WHEREAS, Buyer desires to propagate and sell grapevines;

NOW, THEREFORE, the parties agree as follows:

- 1. MSFES shall deliver to Buyer all these materials listed on the order form that are currently available. After delivery, MSFES shall send Buyer an invoice for the materials supplied; said invoice shall then become a part of this Agreement. All materials are shipped F.O.B Mountain Grove. Buyer agrees to pay all costs of transportation and assumes all risks during shipment. A storage charge may be made for material not picked up within 30 days of notification that materials are ready.
 - 2. Buyer agrees to pay for said materials at MSFES prices on the date of the order by sending checks made payable to the MSFES, Missouri State University, Department of Agriculture, Mountain Grove Campus, 9740 Red Spring Road, Mountain Grove MO 65711-2999. A 50% prepayment (100% for foreign orders) should be sent with the order; the balance is due within sixty (60) days after delivery. MSFES may charge for costs incurred if order is charged by customer.
 - 3. Buyer also agrees to pay to MSFES by May 15 of each year a user fee of two cents (\$.02) for each propagative unit from all generations propagated from MSFES grapevine cuttings which are sold, exchanged, or retained by Buyer during the preceding year, along with documentation from Buyer’s records supporting the amount of Buyer’s payment. A propagative unit is defined as the smallest Vegetative unit used to produce a new plant, or as any unit derived in any way from the plant material provided, including but not limited to a cutting, rooting, benchgrafted vine, graftstick, or budstick or transfer of genetic material by any means. (Note: this clause will not apply if grower agrees to pay the total fee of propagated vines for the limited acres of vineyard with no intention of future propagation)
 - 4. Buyer shall maintain MSFES identification in plantings under this Agreement and shall, in accordance with generally accepted accounting standards, maintain records of all propagative units for which user fees are required. Plantings and records, including registration and certification records of the Missouri Department of Agriculture, shall be open to inspection and audit by an authorized MSFES representative during normal business hours.
 - 5. This Agreement shall be in effect for a term of ninety-nine years from the date of execution or the life of the planting, whichever is longer, and shall be binding on the heirs, successors and assigns of the parties.
 - 6. Buyer agrees to purchase all plant material “as is, where is” with no warranty or representation, express or implied, including the functionality of the plant material. MSEFS has attempted to identify true-to-variety grapevines and has tested negative by enzyme-linked immnuosorbent assay (elisa) and by bioindexing on three indicator vines.
- THE UNIVERSITY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY FURTHER OBLIGATION OR LIABILITY ON THE PART OF THE UNIVERSITY. THE UNIVERSITY FURTHER DISCLAIMS LIABILITY FOR ANY LOSS OR DAMAGE, CONSEQUENTIAL OR OTHERWISE, RESULTING FROM DAMAGED OR DEFECTIVE GRAPEVINES.
- IT IS UNDERSTOOD AND AGREED THAT THE UNIVERSITY WILL NOT BE RESPONSIBLE FOR ANY LOSS SUSTAINED BY REASON OF DEFECTS OR PROBLEMS DEVELOPED OR DISCOVERED AFTER THE PLANT MATERIALS PROVIDED HEREUNDER HAVE MATURED. THE UNIVERSITY IS NOT RESPONSIBLE FOR ANY LATENT DEFECT IN GRAPEVINES SOLD. THE UNIVERSITY IS NOT RESPONSIBLE FOR ANY GENETIC DEFECT WHICH OCCURS OR WHICH BECOMES MANIFEST AFTER THE SALE OF GRAPEVINES OR WHICH OCCURS OR MANIFESTS IN PROGENY OF THE VINES SOLD HEREUNDER.
- IT IS UNDERSTOOD AND AGREED THAT IN NO CASE WILL THE PURCHASER OF GRAPEVINE BE ENTITLED TO OTHER THAN A RE FUND OF THE PURCHASE PRICE THEREOF, OR, AT THE OPTION OF THE UNIVERSITY, REPLACEMENT OF PLANT MATERIALS
- 7. This constitutes the entire understanding between the parties of this matter and supersedes all other agreements, written or oral, between the parties.
 - 8. The laws of the State of Missouri will govern the provisions of this agreement.
 - 9. Buyer’s receipt of any material delivered hereunder shall be an unqualified acceptance of, and a waiver by Buyer of any and all claims with respect to, such material unless Buyer gives Seller notice of claim within fifteen (15) days after such receipt. Buyer assumes all risk and liability for the results obtained by the use of any material delivered hereunder in agricultural processes of Buyer or in any combination with other substances. No claim of any kind, whether as to material delivered or for non-delivery of material, and whether or not based on negligence, shall be greater in amount than the purchase price of the material in respect of which such claim is made. In no event shall either party be liable for special, indirect or consequential damages, whether or not caused by or resulting from the negligence of such party.
 - 10. Neither party shall be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BUYER

MISSOURI STATE UNIVERSITY

Signature

Missouri State Fruit Experiment Station