

FPS PISTACHIO MATERIAL SUPPLY AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, by and between _____ ("Recipient") and The Regents of the University of California ("University"), on behalf of its Foundation Plant Services ("FPS").

WHEREAS, FPS desires to provide for the propagation and distribution of certain special selections of various plant materials maintained at the University's Davis campus, and WHEREAS, Recipient desires to propagate and sell said selections; NOW, THEREFORE, the parties agree as follows:

1. FPS shall deliver to Recipient all those materials listed on the order form that are currently available. After delivery, FPS shall send Recipient an invoice for the materials supplied; said invoice shall then become a part of this Agreement. All materials are shipped F.O.B. Davis. 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 material is ready.
2. Recipient agrees to pay for said materials at FPS prices on the date of the order by sending checks made payable to The Regents of the University of California to FPS, University of California, Davis, 95616-8600. A 50% prepayment (100% for foreign orders) should be sent with the order; the balance is due within sixty (60) days after delivery. FPS may charge for costs incurred if order is changed by customer.
3. Recipient shall not sell or otherwise transfer any budwood of UCB#1 parent trees to any other party.
4. Recipient also agrees to pay to FPS by March 1st of each year a user fee of twenty-five cents (\$.25) for each propagative unit produced using FPS budwood for sale, exchange or retention by Recipient during the preceding calendar year, along with documentation from Recipient's records supporting the amount of Recipient's payment . A propagative unit is defined for purposes of this Agreement as a viable tree, seed or asexually propagated unit from a seedling produced from the budwood purchased from FPS. Only the party originally purchasing budwood from FPS (Recipient) is obligated to pay user fees to FPS on materials it produces.
5. Recipient shall maintain FPS identification in her/his 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 Recipient's records shall be open to inspection and audit by an authorized FPS representative during normal business hours.
6. This Agreement shall be in effect for a term of ninety-nine (99) 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.
7. RECIPIENT AGREES TO PURCHASE ALL PLANT MATERIAL "AS IS" AND "WITH ALL FAULTS."

THE UNIVERSITY MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING PLANT MATERIAL SOLD HEREUNDER. 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 PLANT MATERIALS.

RECIPIENT AGREES TO HOLD THE UNIVERSITY HARMLESS FROM ALL LIABILITY FOR ANY LOSS SUSTAINED BY REASON OF: [A] DEFECTS WHICH DEVELOP AND/OR ARE DISCOVERED AFTER THE SUBJECT PLANT MATERIAL(S) HAVE MATURED; [B] LATENT DEFECTS IN PLANT MATERIAL(S) PROVIDED; [C] GENETIC OR OTHER DEFECT WHICH DEVELOPS AND/OR MANIFESTS ITSELF AFTER SALE OF THE MATERIAL; AND [D] GENETIC OR OTHER DEFECT WHICH DEVELOPS AND/OR MANIFESTS ITSELF IN PROGENY OF THE SUBJECT PLANT MATERIAL(S).

IT IS UNDERSTOOD AND AGREED THAT IN NO CASE WILL THE PURCHASER OF PLANT MATERIAL BE ENTITLED TO OTHER THAN A REFUND OF THE PURCHASE PRICE THEREOF OR, AT THE OPTION OF THE UNIVERSITY, REPLACEMENT OF PLANT MATERIALS.

8. This constitutes the entire understanding between the parties of this matter and supersedes all other agreements, written or oral, between the parties.

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

RECIPIENT:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

signature

Business Office/Distribution Manager, FPS

Signator's Name (Please Print)

Company Name and Address: (PLEASE PRINT)