

TERMS AND CONDITIONS OF THE MIDGE TOLERANT WHEAT RETAILER AGREEMENT

A. Representations and Acknowledgements

1. The Retailer has successfully completed the Midge Tolerant Wheat Retailer training and received a Midge Tolerant Wheat Authorized Retailer number.
2. The Retailer is purchasing Certified seed of a Midge Tolerant Variety which contains a refuge of a midge susceptible variety.
3. The Retailer understands the Midge Tolerant Varieties have been developed with the transfer of the *Sm 1* gene giving these varieties tolerance to wheat midge. No other known source of midge tolerance has been identified. Therefore, proper stewardship of the Midge Tolerant Varieties is critical to protect the effective life of this midge tolerance gene.
4. The Retailer understands that the wheat midge may attack the refuge variety, that the level of the refuge in farm-saved seed may change substantially over multiple generations and that in order to preserve the midge tolerance, it is necessary to limit the use of farm-saved seed derived from Midge Tolerant Varieties to one generation past Certified seed.
5. The Distributors are authorized to enforce Plant Breeder's Rights with respect to the Midge Tolerant Varieties and have the exclusive right to sell, or produce for the purpose of selling, seed for planting of the Midge Tolerant Varieties.
6. The Agreement, once signed by the Retailer and accepted by the Distributor(s), will remain in effect for so long as the Retailer is selling or in possession of Certified seed of any Midge Tolerant Variety or the progeny therefrom, or otherwise until terminated or superseded. The Retailer also understands that the Agreement shall apply to any future acquisitions of any Midge Tolerant Variety by the Retailer, and that each Distributor of a Midge Tolerant Variety shall be entitled to rely upon the Agreement in respect of such future acquisitions.
7. Either party to the Agreement may terminate the Agreement at any time by sending notice of termination to the other party at the address specified on the cover page of the Agreement. Upon termination of the Agreement by either such party for any reason (a) the Retailer shall terminate the sale and use of any and all Midge Tolerant Varieties; and (ii) the Retailer will no longer have a right to sell or use any Midge Tolerant Variety for any purpose. Notwithstanding the foregoing, the Retailer's obligations and Distributors' rights that arose under the Agreement prior to termination will survive and continue in effect.
8. The Retailer understands that the types and quantities of Midge Tolerant Varieties that he, she or it purchases will be provided to the Distributors for the purpose of monitoring compliance with the Agreement.

B. Conditions of Use

1. The Retailer agrees to have all customers that purchase Midge Tolerant Varieties review and sign a Midge Tolerant Wheat Stewardship Agreement prior to receiving seed. The Retailer also agrees to act as the agent of the Distributors for the limited purpose of signing such Midge Tolerant Stewardship Agreements.
2. The Retailer agrees to submit to the Midge Tolerant Wheat Stewardship Resource Centre sales by customer for all Midge Tolerant Varieties sold by June 30 of each season.
3. The Retailer understands that the Retailer may be audited for compliance with the Agreement and that each Distributor of a Midge Tolerant Variety that the Retailer acquires has the right to inspect and take copies/samples as required of the Retailer's records and physical premises.
4. The Retailer consents to the collection, use and disclosure of any personal information recorded in the Agreement, and collected during the audit process referenced in Section B(3) above, to the Vendor and each Distributor for the purpose of administering the Agreement, and monitoring and enforcing compliance with the Agreement.
5. The Retailer agrees that it will not use or disclose personal or customer information collected or accessed via any Midge Tolerant Wheat Stewardship Agreement, or the Midge Tolerant Wheat Stewardship Resource Centre (including without limitation any database or repository of such information maintained in connection with the Midge Tolerant Wheat stewardship program), for any purpose other than to submit the information referenced in Section B(2) above and record and report retail transactions of Midge Tolerant Varieties as required pursuant to this Agreement.

C. Remedies

1. The Retailer agrees that if the Retailer does not comply with the terms of the Agreement they will be prohibited from purchasing or selling any Midge Tolerant Varieties in the future. The Retailer's name will also be published on a "do not sell list".
2. The Retailer acknowledges that breach by it of the Agreement may cause irreparable harm for which damages are not an adequate remedy and that, in addition to any other remedy to which the Distributors may be entitled, the Distributors shall be entitled to equitable relief (including without limitation injunctive relief) in relation to such breach.
3. The Retailer agrees that the Retailer will be responsible for the cost of any audits which prove the Retailer has not been compliant with the Agreement.
4. In addition to the remedies described above, the Retailer agrees that if the Retailer does not comply with the Agreement, that the Retailer will also be liable for all legal expenses incurred by each Distributor in enforcing its rights under the Agreement.

For more information please visit www.midgetolerantwheat.ca