

CONDITIONS OF SALE - BRITISH SEED HOUSES LIMITED (THE "SELLER")

1. SCOPE OF CONDITIONS

These Conditions (the "**Conditions**") and any order, which is accepted by the Seller, or any sale confirmation issued by the Seller (in either case, the "**Proposal**") shall form the contract between the Seller and the Buyer (the "**Contract**") for the supply of goods (the "**Goods**") to the Buyer by the Seller. No conduct by the Seller shall be deemed to constitute acceptance of any terms put forward by the Buyer.

2. ACCEPTANCE OF ORDERS

- No order shall be binding upon the Seller unless accepted by the Seller in writing. Acceptance of delivery of the Goods shall be deemed to constitute acceptance by the Buyer of these Conditions.
- Where agreed by the Seller, the Buyer may request a sample of Goods to test for contaminants before placing an order with the Seller.
- Orders are accepted by the Seller subject to the Goods being available to the Seller at the time of delivery. If the Seller's suppliers do not produce sufficient quantities of Goods to meet the Seller's requirements, the Seller shall be under no obligation to purchase Goods from alternative sources of supply.
- The Seller reserves the right in the event that a particular variety is not available to substitute a suitable alternative variety. If the substituted variety is not acceptable to the Buyer, the Buyer must notify the Seller within 14 days of receipt. The Seller shall collect then such goods within 14 days of the Buyer's notification, any price paid will be refunded and the Contract will be deemed to be terminated without any liability to either party.
- Seed is supplied for onward retail sale only. It may not be sold on to other traders without explicit written permission from the Seller.**

3. PRICE

- The price of the Goods shall be as stated in the Proposal (or, where no price is stated in the Proposal, as stated in the Seller's then current price list) and is exclusive of Value Added Tax.
- The Seller may at any time before delivery in accordance with the Contract ("**Delivery**") increase the price to reflect any increase in the costs of the Seller including but not limited to, any change in foreign exchange rates, transportation and associated costs or costs due to delay caused by the Buyer.
- The price of any Goods which after the date of the Proposal become the subject of a grant of plant breeder's rights under the Plant Varieties and Seeds Act 1964 (as amended) will be adjusted to include the cost of any royalty payable to the owner of the rights. If, in the case of a variety, which is already the subject of plant breeders rights, there is a change in the rate of royalty payable to the owner of the rights after the date of the Proposal the price will be adjusted accordingly.

4. TERMS OF PAYMENT

- The Seller shall be entitled to raise an invoice for price on or at any time after Delivery.
- Unless otherwise agreed in writing by a director of the Seller, payment shall be made in full within 30 days of the date of invoice and time for payment shall be of the essence.
- If a credit charge is added to the price it will appear on the invoice. This credit charge will be deducted if the Goods are paid for in accordance with clause 4(b). If not, the credit charge must be paid within 60 days from the date of invoice.
- Unless otherwise stated, all bags used by the Seller for packing the Goods are non-returnable and no credit will be allowed for any bags, which are returned to the Seller.
- All pallets on which Goods are delivered are returnable at the Buyer's expense to the Seller's depot within 3 months of Delivery. Should the Buyer fail to do this, the Seller shall charge the Buyer for all pallets not returned within this period. The charge for each pallet is as stated on the Seller's current price list and payment must be made within 14 days of the date of invoice for the pallets.
- The Seller shall be entitled to charge interest on overdue accounts calculated on a daily basis at the rate of 4% per annum above Barclays Bank base rate from time to time from the due date until the date of payment. If a credit charge is made pursuant to clause 4(c) interest will not be payable in respect of the first 90 days from the date of Delivery.
- All payments payable by the Buyer shall be made without set-off or counterclaim of any description.
- Notwithstanding any period of credit, which may have been granted to the Buyer, the Seller reserves the right to revoke such credit and to demand immediate payment of all sums due to the Seller.

5. DELIVERY AND RISK

- Any dates quoted for delivery are approximate only and time for delivery shall not be of the essence.
- The Buyer shall not be entitled to reject any consignment, which is within +/- 5% of the quantity of Goods specified in the Proposal.
- Delivery shall be made by the Buyer collecting the Goods at the Seller's premises at the time specified by the Seller to the Buyer or if some other place for delivery is agreed, by the Seller delivering the Goods to that place ("**Delivery**").
- Risk shall pass on Delivery.
- The Seller may deliver the Goods by separate installments. Each separate installment shall constitute a separate Contract. Any claim in respect of one or more installments including failure to deliver shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- On failure by the Buyer to take delivery of any installments of Goods, the Seller may store the Goods until actual delivery, sell the Goods at the best readily obtainable price and/or terminate the Contract. The Seller may charge the Buyer for such storage, the cost of insuring the Goods and any other associated costs whilst in storage and for any shortfall below the price on the sale of the Goods.
- If, notwithstanding clause 5(a), the Buyer incurs any liability for late or non-delivery of the Goods, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer over the price (in the cheapest available market) of similar goods to replace those not delivered.
- The Buyer shall if required give the carrier a receipt for the weight of the Goods at the time of Delivery. Where the Buyer collects unweighed grain from the Seller, it shall notify the Seller in writing of the net weight of such grain as soon as possible after collection.
- In relation to export sales, the Buyer shall be responsible for complying with all relevant legislation or regulations and shall pay relevant duties on the Goods.

6. TITLE

- Notwithstanding the passing of risk in the Goods to the Buyer, title shall not pass to the Buyer until the Seller has received in clear funds payment in full of the price and all other sums due to the Seller.
- Until title passes to the Buyer:
 - the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee;
 - the Buyer shall store the Goods separately, insure them and mark them clearly as the Seller's property;
 - the Seller may require the Buyer to deliver up the Goods failing which the Seller shall be entitled to enter upon premises where the Goods are stored and repossess the Goods;
 - the Buyer shall not pledge or in any way charge for security for any indebtedness any of the Goods, which are the property of the Seller. Without prejudice to any other rights, which the Seller may have, if the Buyer does so all sums due to the Seller shall become due and payable immediately.
- The Seller shall be entitled to maintain an action for the price notwithstanding legal title to the Goods has not passed to the Buyer.

7. FORCE MAJEURE

- The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay or failure to perform if such delay or failure was due to any cause beyond the Seller's reasonable control including but not limited to shortage of labour, power or fuel, delay by the Seller's suppliers or crop failure.

8. PRODUCT STANDARDS

- Subject to clauses 2(d) and 2(e), the Seller warrants that the Goods shall be of the species and type specified in the Contract and that they shall comply, at the time of Delivery, with the United Kingdom Seeds Regulations currently in force so far as they are applicable and so far as they are not inconsistent with any express terms of these Conditions. Subject as expressly provided in these Conditions, all other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- Where the Seller has provided the Buyer with a sample in accordance with clause 2(b) above, the Seller warrants that subject to clause 2 (d) the bulk delivered to the Buyer shall be from the same batch or batches as the sample but the Seller does not warrant that such bulk shall correspond exactly with such sample (whether in terms of the existence of contaminants in such bulk or in any other respect).

c. Where the sale of Goods is specified to be "As Grown", the AIC Grain Note conditions shall apply so far as they are not incompatible with these Conditions.

d. Any advice given by employees or agents of the Seller are approximations and given for general guidance only. Variations in climate conditions could render such advice inaccurate. The Buyer is advised that any such information does not constitute a representation by the Seller and should not be relied on as such. **The Seller does not give any warranty that the Goods are fit for the Buyer's purpose (whether or not that purpose has been made known to the Seller) and the Buyer must satisfy itself that any Goods ordered are of a variety and performance (including, but not limited to, purity) satisfactory for its requirements.**

e. Where specially treated or tested Goods are offered, the Seller warrants only that the treatment or testing to the specification quoted has been carried out but gives no warranty or representation as to the effects or implications of such treatment or testing. In the case of pelleted Goods, the Seller relies on the expertise of the pelletter and can offer no guarantee beyond what the Seller receives from the pelletter.

f. Unless otherwise stated in writing, the Goods are sold for the production of consumer crops only and not for multiplication purposes.

g. Where the Goods have been treated with a liquid or powder to control pests or diseases, or have been fumigated or pelleted, the purity and germination results may be based on tests made before or after the treatment.

h. Where Goods of any Beta species have been rubbed, the purity and germination percentages may be based on tests made before or after treatment.

i. The Goods are of conventional varieties bred from parent plants, which have not been genetically modified. All reasonable steps have been taken to prevent the adventitious presence of GM material during breeding, production and handling of the Goods (including complying with any separation distances as may be recommended from time to time by relevant bodies) and appropriate batch samples have been tested to ensure compliance with the relevant seed legislation. The Goods are field grown. Accordingly no guarantees of absolute freedom from GM impurities can be given since this does not, and cannot, exist in nature. No liability is accepted for any damage whatsoever arising from the possible occurrence of any adventitious traces of GM impurities in the Goods.

9. LIMITATION OF LIABILITY

- In respect of any breach by the Seller of any warranties given by it under these Conditions, the Seller's liability to the Buyer shall be limited at the Seller's sole discretion to replace the Goods in question, or where supplies are not available, to offer a suitable alternative, or to refund the appropriate proportion of the price attributable to the Goods in question.
- Notwithstanding clause 8 (a), the Seller's liability to the Buyer is conditional in any event on the following:
 - the Buyer having notified the Seller of the alleged breach of warranty within 5 working days of Delivery where that breach ought to be apparent on reasonable examination and in any event within 4 months of Delivery; and, where the Goods have been damaged in transit, the carrier's delivery sheet having been marked "damaged in transit";
 - the Buyer having taken all necessary and reasonable measures to store the Goods properly so that there is no further deterioration in their condition;
 - since failure can depend on so many natural and other factors beyond the Seller's control, clear proof being given by the Buyer that the Goods alleged to have performed unsatisfactorily were in fact goods supplied by the Seller and were sown on suitable prepared ground, treated carefully and correctly throughout and subject only to such conditions as were likely to produce a favourable crop.
- Diseases of plants and other contaminants can be transmitted by the wind, by insects, by animals or by human agencies and may be seed borne or soil borne. The Seller believes the Goods to be free from latent defect, but it is not a term of the Contract nor does the Seller warrant or represent that any Goods sold by the Seller shall be free from such defects and as the Buyer is given an opportunity to test the Goods prior to purchase, the Seller will not be responsible in any way for the resultant crop.
- All liability is excluded for:
 - any loss or damage arising from the use of the Goods and for any consequential loss or damage arising out of such use or any failure in the performance of or any defects in the Goods including but not limited to total or partial failure of the resultant crop, and
 - any loss of anticipated revenues, loss of profits, loss of business opportunities, loss of goodwill, damage to reputation, any indirect, special or consequential loss or damage, costs, expenses or other such claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise).
- The entire liability of the Seller in respect of any and all claims made against it by the Buyer under or in connection with the Contract shall not in any event exceed the sum of £50,000 (except as expressly provided in these Conditions).** The price of Goods is based upon the limitations on the Seller's liability in clauses 8 and 9 and would be much greater if a more extensive liability were required to be undertaken. The Buyer acknowledges that the limitation of the Seller's liability is fair and reasonable and undertakes to obtain insurance against such risks as are hereby excluded if the Buyer deems it necessary.
- Subject to the provisions of any applicable legislation all Goods are sold to Buyers in the United Kingdom on the condition that they will be sown within the European Economic Community and will not be resold for export outside those countries without prior written permission of the breeder of the Goods whether it be the Seller or the United Kingdom Breeders' Agent. The Buyer agrees to indemnify the Seller against all costs, claims and liabilities, which may accrue to the Seller as a result of the Buyer's breach of this Clause.
- Nothing in these Conditions shall operate to limit or exclude the liability of the Seller for death or personal injury caused by its negligence.

10. TERMINATION

In the event of the Buyer dying, becoming bankrupt or going into liquidation, suffering the appointment of a receiver, making any arrangement with creditors, or committing any material breach of any term of the Contract or if any of the foregoing shall appear to be threatened or contemplated, the Seller shall be entitled, without prejudice to other rights of the Seller, to postpone Delivery until the breach is rectified and/or to terminate the Contract in whole or in part and to recover payment for all Deliveries already made and for the cost of purchasing goods for the purpose of future deliveries and also to recover from the Buyer a sum equivalent to the Seller's loss of profit arising out of such termination.

11. ARBITRATION

- All international trade and deliveries to or from a country outside the UK are subject to the rules of International Seeds Federation.
- Unless otherwise agreed, all other disputes shall be resolved by the courts.

12. GENERAL

- The Contract constitutes the entire agreement and understanding between the parties with respect to its subject matter. Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on, and shall have no remedy and waives all rights in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Contract or not) other than as expressly set out in this Contract as a warranty or representation. The only remedy available to it for breach of such warranties or representations shall be for breach of contract under the terms of this Agreement.
- No variations to these Conditions shall be binding unless agreed in writing by a director of the Seller.
- If any provision in the Contract is declared void or unenforceable by any court or other body of competent jurisdiction or is otherwise rendered so by any applicable law, such provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of the Contract shall remain in full force and effect.
- The Contract shall be governed by and construed in accordance with the laws of England and shall be subject to the non-exclusive jurisdiction of the English courts.