

#### 14. Health and Safety

- 14.1 The Customer shall take all necessary steps to ensure that the Goods are safe and without risk to health when properly used in accordance with instructions or information supplied to the Customer.
- 14.2 The Customer shall indemnify the Supplier against all costs claims demands expenses and liabilities of whatever nature other than in respect of death or personal injury arising out of or in connection with the sale of the Goods or the use or possession thereof by the Customer.

#### 15. Notices

Any notice provided under this agreement shall be in a permanent readable form and shall be deemed properly given if addressed to the party concerned as its principal place of business or last known address.

#### 16. Entire agreement

- 16.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 16.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 16.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

#### 17. Assignment

The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion.

#### 18. Set off

The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

#### 19. Severance

If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

#### 20. Conflicts within contract

If the terms contained in the Order, schedules, appendices or annexes to the Contract would conflict with these Conditions, these Conditions shall be deemed to be varied in relation to the terms with which they are in conflict.

#### 21. Third party rights

Except as expressly provided for, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

#### 22. Governing Law

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

Grainseed Ltd. Revised and effective [ ]



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## CONDITIONS OF SALE

### I. Definitions and Interpretation

- 1.1 "Conditions" means the Supplier's terms and conditions of sale set out in this document;
- "Contract" means the agreement between the Supplier and the Customer for the sale and purchase of the Goods;
- "Customer" means the person who purchases the Goods from the Supplier and whose details are set out in the Order;
- "Force Majeure" means any event or sequence of events beyond a party's reasonable control such as an act of God including, but not limited to, fire, flood, drought, earthquake, windstorm or other natural disaster; act of any sovereign including war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation; acts of terrorism; nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; civil emergency (whether an emergency be declared or not); radioactive contamination; inability to access land due to animal or human epidemic, law, judgment, order, decree, embargo, blockade, labour dispute including strike, lockout or boycott; interruption or failure of utility service including to electric power, gas, water or telephone service; failure of the transportation of any personnel equipment, machinery supply or material required by any essential personnel for performance of the agreement; and breach of contract by any essential personnel;
- "the Goods" means the seeds, fertilisers, additives and other products sold by the Supplier sold as specified in the Contract to be supplied by the Supplier to the Customer (including any part or parts of them);
- "Insolvency Event" the happening in relation to any Customer of any of the matters listed in clause 9;
- "the Order" means the Customer's order for Goods as set out in the order form;
- "the Supplier" Grainseed Limited whose registered office is at The Havens, Ransomes Europark, Ipswich, Suffolk, IP3 9SJ (company number 02700833);
- "VAT" means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.
- 1.2 In these Conditions, unless the context otherwise requires:
- a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
  - any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
  - a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;

- d. a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- e. a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- f. a reference to a gender includes each other gender;
- g. words in the singular include the plural and vice versa;
- h. any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- i. a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form including email);
- j. a reference to legislation is a reference to that legislation as in force at the date of the Contract; and
- k. a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## 2. Application of these Conditions

- 2.1 These Conditions constitute the conditions on which the Supplier is prepared to supply the Goods to the Customer.
- 2.2 No employee or agent of the Supplier has the authority to:
  - a. Alter, vary or waive these conditions unless authorised by a Director of the Supplier; or
  - b. Make or give any representation or warranty.
- 2.3 The terms and conditions contained within the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.4 Whenever the Customer requests goods from the Supplier it shall be treated as a separate offer to purchase. Each order will be deemed to be a separate Contract subject to these conditions.
- 2.5 An order from the Customer shall be an offer to purchase the Goods in accordance with these Conditions. No order placed by the Customer shall be deemed to be accepted by the Supplier until the Supplier confirms their acceptance whether verbally or in writing. This shall not apply to sales made over the counter or to other orders placed in a face to face context.
- 2.6 The Supplier may accept or reject an order at its discretion. An order shall not be accepted and shall not be a binding obligation to supply any Goods until the Supplier confirms its acceptance, whether verbally or in writing or by supplying the Goods.
- 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.8 Quotations provided by the Supplier are invitations to treat only.
- 2.9 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Customer's acceptance of the Conditions.
- 2.10 Any variation to these conditions (including any special terms and conditions agreed between the parties) shall be void unless agreed in writing by the Supplier.

## 3. Quality of the Goods

- 3.1 The Goods sold by the Supplier shall comply at the time of delivery with the UK Seeds Regulations

- 11.4 Some seed sold by the Supplier is chemically treated to control pests and diseases. The Customer shall strictly observe the precautions detailed on the packaging in default of which the Supplier will not be liable.
- 11.5 Diseases of plants can be transmitted by wind, insects, animals or human agency and may be seed borne or soil borne. The Supplier believes the Goods to be free from latent defects, but it is not a condition of sale nor does the Supplier warrant that any Goods sold shall be free from such defect and in consequence will not be responsible for the resultant crop.
- 11.6 All international trade and deliveries to and from a country outside the UK are subject to the rules of the International Seed Federation.
- 11.7 Any dispute shall be referred to arbitration in accordance with the rules of the Arbitration Service of the British Society of Plant Breeders. All parties to the Contract shall be deemed to have knowledge of such rules and to have elected to be bound thereby.
- 11.8 Arbitration proceedings shall be commenced as regards claims relating to quantity or quality within twenty-eight days from Delivery and as regards technical claims within ninety days of Delivery.

## 12. Supplier's Liability

- 12.1 The Supplier warrants that the Goods supplied shall be the species and type specified in the Contract.
- 12.2 In the event that any Goods supplied by the Supplier do not comply with the express terms of the Contract, the Supplier will at its option replace the Goods free of charge to the Customer or will refund the proportion of the payment made by the Customer in relation to the percentage of the Goods which do not comply with the Contract.
- 12.3 The Supplier excludes all liability whatsoever for any defects in the Goods which could not reasonably have been discovered by the Supplier prior to delivery, for any defects in the Goods occurring without any negligence on the part of the Supplier and for any lack of effectiveness of any chemical treatment of the Goods.
- 12.4 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 defect in any Goods supplied and for any loss or damage including. Without prejudice to the generality thereof, any total or partial failure of the resultant crop.
- 12.5 The price of the Goods is based on the foregoing limitations upon the Supplier's liability. The price of the Goods would be much greater if a more extensive liability were required to be undertaken.
- 12.6 The Goods supplied are of conventional or hybrid 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 this seed (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. This seed is 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 seeds.
- 12.7 All advice provided by the Supplier, including (but not limited to) product recommendations and market conditions and which is not subject to a separate charge for such advice, is given without liability to the Customer. The Customer should seek independent expert advice. If any advice is given for which an express charge is made for such advice or consultancy services, the advisory service will be given with reasonable care and skill but all other warranties implied by law shall be excluded to the full extent permitted by law.

## 13. Multiplication

Unless otherwise expressly agreed in writing by the Supplier the Goods are sold for the production of consumer crops and for the multiplication of seeds but such multiplication shall not be for the purposes of resale on a commercial basis.

- 9.3 If a Customer (being a partnership):
- is unable to pay its debts;
  - Is presented with a petition for its winding up under the provisions of the Insolvent Partnerships Order 1994;
  - If such petition for winding up is presented in conjunction with bankruptcy or individual insolvency, or if a petition is in relation to any partner;
  - Enters into any composition, scheme or arrangement or voluntary arrangement including its business and assets or the share of any partner; or
  - is involved in any action for a partnership account and/or a winding up or dissolution of the Customer under the Partnership Act 1890.
- 9.4 In any of the circumstances set out in clauses 9.1, 9.2 or 9.3, notwithstanding any previous arrangements with the Supplier for deferred payments, the full remaining price for any Goods delivered shall become payable.
- 9.5 The Supplier shall have the right without prejudice to any other rights and remedies available to cancel and/or suspend or to refuse to accept any further deliveries and/or terminate the Contract at any time after becoming aware of any circumstances listed in clauses 9.1, 9.2 or 9.3, provided that when exercising any of the above rights the Supplier shall inform the Customer in writing of its intention to exercise such right or rights within 28 days of the relevant occurrence.
- 9.6 The Supplier shall not be liable to pay any compensation to the Customer if the rights under this clause shall be exercised.

#### **10. Confidentiality and announcements**

- 10.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- any information which was in the public domain at the date of the Contract;
  - any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - any information which is independently developed by the Customer without using information supplied by the Supplier; or
  - any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 10.2 This clause shall remain in force in perpetuity.
- 10.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

#### **11. Claims**

- 11.1 Claims by the Customer based upon those defects of quantity, quality or condition which ought to be apparent upon reasonable examination shall be notified to the Supplier by telephone or facsimile transmission and written confirmation despatched within five business days of delivery of the Goods to the destination to which they have been consigned. If the Goods are damaged in transit it is essential delivery sheets be marked "damaged in transit".
- 11.2 The Customer shall not be entitled to make any claim unless the Goods have been properly and appropriately stored during the period after arrival at their destination. The Customer shall also take all necessary and reasonable measures to mitigate damage or loss without prejudice to any claim of either party.
- 11.3 No complaint can be considered unless there is clear evidence that the Goods were supplied by the Supplier and that it was sown on suitable prepared ground, treated carefully and correctly throughout and subjected only to such conditions as were likely to produce a favourable crop.

currently in force or the minimum standards of the relevant European Union Seeds Directive otherwise in force.

- 3.2 All information concerning the Goods whether contained in advertisements catalogues or given by employees or agents of the Supplier is given for general guidance only. (Variations in local or climatic conditions could render such information inaccurate.) The Customer is advised that any such information given does not constitute a representation by the Supplier and should not be relied on as such. The Customer should satisfy themselves that any goods which they orders are of a variety and performance satisfactory for their requirements and therefore orders such goods at their own risk.
- 3.3 Unless agreed in writing by the Supplier all fodder crop seed is sold solely for the production of animal fodder and no warranties are given beyond UK Seeds Regulations currently in force for any other use.
- 3.4 Where at the Customer's request any treatment whether chemical or otherwise is applied to the Goods, the Supplier's liability shall be limited to such treatment being carried out in the correct manner and/or in accordance with the instructions given by the manufacturer of the chemical in question. The Supplier accepts no responsibility whatsoever for the effectiveness of such treatment or any direct or indirect damage to the Goods which may result thereof.

#### **4. Availability of Goods**

- 4.1 Orders are accepted by the Supplier subject to Goods of the contract description being available to the Supplier at the time delivery is required as to which the Supplier accepts no obligation. If the Supplier's production contracts with third parties do not produce sufficient quantities of the Goods to meet the Supplier's requirements, the Supplier shall not be under obligation to purchase Goods from alternative sources of supply.
- 4.2 If the Supplier has insufficient quantity of the Goods in accordance with the description in the Contract to supply all their customers, the Supplier shall be entitled to allocate such Goods as are available to it in such quantities and to such Customer or Customers as it shall in its absolute discretion determine, or in the case of grass mixture, to alter the contents of such mixture.
- 4.3 The Customer shall pay pro-rata for any partial delivery of the Goods. If the Supplier is unable to deliver any Goods to the Customer the Contract shall terminate without any further liability to either party. The Supplier shall use all reasonable endeavours to notify the Customer at the earliest opportunity of any shortages or non-availability of Goods.
- 4.4 Quotations for mixtures of seed are given in the belief that the varieties stated are freely available in good quality and at reasonable cost. The Supplier reserves the right to substitute comparable alternative varieties if in its judgement it is desirable or necessary to do so. Any such changes will be shown either on the packaging label or invoice.

#### **5. Price and Payment**

- 5.1 All prices are quoted exclusive of VAT.
- 5.2 The price for the Goods shall be based on the quotation given to the Customer by the Supplier. If no quotation has been given the prices listed in the Suppliers current catalogue or price list shall apply to any contract, telephone order or confirmation order (Price). The Supplier may withdraw any price quoted provided that such withdrawal occurs prior to the Contract for Goods being entered into.
- 5.3 The Supplier reserves the right to increase the prices of the Goods to reflect any increase in cost to the Supplier due to any change in law or regulation applicable to the Supplier, the Goods or tax duty levy or other payment whatsoever imposed upon the Goods after the date of the contract by the European Union or any national government and the Customer agrees to pay any increase in price made in accordance with this clause. If as a result of any change in such law or regulation or imposition of such duty a contract will be performed by the Supplier have a material adverse impact on the Supplier which cannot be resolved by an increase of the prices of the Goods, the Supplier may terminate such contract without liability to the Customer.

- 5.4 Payment for the Goods shall be made to the Supplier's nominated bank account without deduction or set-off in cleared funds by the Customer within twenty-eight days of dispatch (Due Date) unless otherwise agreed in writing.
- 5.5 Time of payment is of the essence.
- 5.6 If payment is not made in accordance with clause 5.4 by the Due Date, the Supplier reserves the right to;
- charge interest on the Price or any unpaid part from the Due Date until full payment is received. Interest will be charged at 2% above the base lending rate of HSBC Bank PLC;
  - collect any credit charges due on late payments, where these are included on the related invoices;
  - sell or otherwise dispose of any Goods whether appropriated to the Contract or not;
  - cancel the Contract and any other contract between the Supplier and the Customer or suspend further deliveries to the Customer; or
  - sue for the price of the Goods, even if title has passed to the Customer.

## 6. Delivery

- 6.1 Delivery dates are approximate only and time shall not be of the essence unless otherwise agreed in writing.
- 6.2 The Goods shall be delivered to the Customer's place of business. The Customer shall provide staff to enable the Goods to be offloaded and provide suitable access to the point of unloading. The Customer shall take delivery of the Goods within the time period set out in the Order (Delivery).
- 6.3 Delivery shall be deemed to have taken place immediately upon the offloading of the Goods at their destination.
- 6.4 Unless agreed otherwise the Supplier shall arrange for the carriage of the Goods to the Customer's place of business. The costs of carriage and any insurance which the Customer reasonably directs the Supplier to incur shall be reimbursed by the Customer and shall become part of the Price and therefore shall be subject to clause 5. The carrier shall be deemed to be an agent of the Customer.
- 6.5 The Supplier may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with clause 5.
- 6.6 No failure of or delay in delivery of any instalment nor any defect in the Goods shall entitle the Customer to treat the Contract as repudiated.
- 6.7 Unless otherwise agreed between the parties delivery of a shortage or surplus not exceeding 5% of the quantity or weight of the Goods ordered shall, at the Supplier's option be considered to be due execution of the Contract and the Customer shall not be entitled to object to or reject the Goods by reason of such surplus or shortfall. The Supplier shall have the right to the return of any surplus over the amount of Goods ordered.
- 6.8 Failure by the Customer to take delivery of any instalment of the Goods or to pay for such instalment in accordance with these Conditions shall entitle the Supplier to terminate the Contract and/or resell the Goods, in which case the Customer shall be liable for any costs or losses incurred by the Supplier.

## 7. Title and Risk

- 7.1 In spite of delivery having been made the ownership of the Goods shall not pass from the Supplier to the Customer until:
- the Customer has paid the Price plus VAT without deduction or off-set in cleared funds; and
  - no other sums whatever are due from the Customer to the Supplier.
- 7.2 Until title to the Goods has passed the Customer shall:
- hold the Goods as bailee for the Supplier;

- store the Goods separately from all other material in the Customer's possession;
- take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
- ensure that the Goods are clearly identifiable as belonging to the Supplier;
- not remove or alter any mark on or packaging of the Goods;
- inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clause 14; and
- on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

7.3 Until such time as ownership in the Goods passes from the Supplier the Customer shall upon request deliver up such of the Goods as have not ceased to be in existence or re-sold to the Supplier. If the Customer fails to do so the Supplier may enter upon any premises owned occupied or controlled by the Customer where the Goods are situated and re-possess the Goods.

7.4 The Customer shall not pledge or in any way charge by the way of security any of the Goods which are the property of the Supplier. Without prejudice to the other rights of the Supplier, if the Customer does so all sums whatever owing by the Customer to the Supplier shall forthwith become due and payable.

7.5 Risk shall pass to the Customer from the time of delivery.

## 8. Force Majeure

- 8.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- promptly notifies the other of the Force Majeure event and its expected duration; and
  - uses best endeavours to minimise the effects of that event.
- 8.2 If, due to Force Majeure, a party:
- is or shall be unable to perform a material obligation; or
  - is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days; the other party may, within 30 days, terminate the Contract on immediate notice.

## 9. Insolvency

- 9.1 If the Customer (being a company or other incorporated body):
- Is unable to pay its debts within the meaning of s123 Insolvency Act 1986 or convenes a meeting of its creditors;
  - Proposes to enter into an arrangement voluntarily within Part I of the Insolvency Act 1986 or any other proposal for a composition, scheme or arrangement with its creditors or a receiver;
  - Appoints an administrative receiver or similar officer to deal with all or a substantial part of the business or its affairs; or
  - convenes a meeting for the purpose of considering a resolution or other steps towards winding up or for the making of an administration order.
- 9.2 If the Customer (being an individual):
- Is unable to pay its debts within the meaning of s268 of the Insolvency Act 1986;
  - Is presented with a petition for bankruptcy; or
  - Makes an arrangement or compromise for the benefit of its creditors.