

HUBBARDS SEEDS GENERAL CONDITIONS OF SALE

1. ACCEPTANCE OF TERMS

- (a) All contracts of sale made by Hubbards seeds (the Seller) shall be deemed to incorporate these terms and conditions. No variation of or addition to these terms and conditions shall form part of any contract unless made or specifically accepted by the seller in writing.
- (b) These terms and conditions shall override and take the place of any other terms and conditions any document or other communication used by the Buyer in concluding the contract with the Seller.
- (c) The application of the Uniform Laws on International Sales shall be excluded. The construction validity and performance of all contracts shall be governed by the laws of England.
- (d) The Seller accepts the Buyers offer to purchase the goods only by posting or otherwise sending to the Buyer the Seller's Contract of Sale form if requested by the Buyer.

2. QUANTITY

- (a) Where the word "Approx" is used in reference to quantity, the Seller shall have the option of delivering 10% more or less at contract price. The price of any excess quantity accepted by the Buyer (i.e. over 110%) shall be settled by arbitration unless agreed.
- (b) The Seller will accept only the carrier's public weighbridge certificate as conclusive evidence of the weight of any bulk goods (not packaged goods) delivered to the Buyer. This certificate shall be provided without charge or delay to the Seller.

3. PRODUCT STANDARDS

- (a) All information advice or recommendations concerning the goods or their storage or use whether contained in advertisements, catalogues or given by partners, employees or agents of the Seller are given for general guidance only (variations in local or climate conditions or other circumstances could render such information inaccurate) any such information given to the Buyer does not constitute a representation by the Seller and should not be relied on as such and the Seller accepts no liability in respect thereof. The Buyer should satisfy himself that any goods which he orders are of a type and performance satisfactory for his requirements and so orders such goods at his own risk.
- (b) All seeds sold by the Seller comply at the time of delivery unless otherwise stated with either:
 - (i) The UK seeds standards currently in force or
 - (ii) The minimum standard of the EEC Seeds Directives

4. AVAILABILITY OF GOODS

Orders are accepted by the Seller subject to goods of the contract description being available to the Seller at the time delivery is required as to which the Seller accepts no obligation. If the Seller's arrangements with its normal producers or suppliers do not produce sufficient quantities of goods of the contract description to meet the Seller's requirements the Seller shall not be under an obligation to purchase such goods from alternative sources of supply. If the Seller has insufficient goods of the contract description available to meet all its requirements the Seller shall be entitled to allocate such goods as are available to it in such quantities and to such buyer or buyers as it shall in its absolute discretion determine or in the case of grass mixture to alter the contents of such mixture. The Buyer shall pay pro rata for any partial delivery of the goods ordered. If the Seller is unable to deliver any goods to the Buyer the contract for the sale thereof shall determine without any further liability on either party. The Seller shall use all reasonable endeavours to notify the Buyer at the earliest opportunity of any shortages or non-availability of goods.

5. PRICE AND PRICE VARIATION

- (a) All prices are quoted exclusive of VAT and delivery unless otherwise agreed in writing.
- (b) If the goods are foreign origin, the Seller reserves the right to adjust the price payable by the Buyer so as to reflect any alteration in the value of the Pound sterling in terms of the currency of purchase between the date of sale and the rate payable on importation. The Seller also reserves the right to alter prices without notice in the event of the imposition of or increase in any tariff or import levy.
- (c) The price of any variety of seed which has been granted or become the subject of a grant of Plant Breeders Rights under the Plant Varieties and Seed Act 1964 may be increased by the amount of any revised royalty payable under such Rights.
- (d) The Seller reserves the right to increase the price by an amount equal to the cost to it of any other change of circumstances in relation to the goods after the date of contract including but not limited to the imposition of any legal requirement or the imposition of or increase in any tax duty tariff levy or royalty.

6. DELIVERY

- (a) The collection and/or delivery of the goods is the responsibility of the Buyer although if it expressly agreed in writing at the time of order the Seller shall arrange delivery (freight insurance certification wharfage and handling) of the goods from its store to an agreed destination (for export sales FAS named port unless otherwise agreed in writing) nominated by the Buyer and sub-sections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall not be applicable. The Seller shall charge the Buyer for such delivery services unless otherwise agreed in writing. In the unlikely event of any rejection of the goods by the Buyer the Buyer shall be totally liable for any costs incurred in transporting the goods from the Seller to the Buyer's nominated address.
- (b) Dates given for delivery are approximate only and time shall not be of essence in relation to delivery unless expressly agreed in writing. The Seller shall not be liable for any loss or damage resulting from delay howsoever the same may be caused. However in respect of goods normally sold for winter sowing the Buyer shall nonetheless uplift or pay for the goods within notification of availability or by the 30th November of the harvest year whichever shall be earlier. In circumstances agreed by the Seller at its option special dispensation may be granted for movement to take place by the latest sale sowing date of the specific variety in that season. In respect of spring sown seeds they shall be paid for within 28 days of invoice and uplifted within 28 days of notification of readiness unless by prior agreement with the Seller. In any event all spring seeds ordered before the 1st of March shall be paid for by the 31st March of the same year. Notwithstanding the above in the event that the Buyer refuses or fails to take delivery of the goods or fails to make payment against any installment delivery or defaults under the terms of this Contract of Seller shall have the option of cancelling the same and or
- If possible reselling the goods the Buyer being liable for any losses incurred by the Seller thereby.
- (c) Whatever the manner of delivery the Seller will not be liable for any acts or omission whatsoever of the carrier who is employed as an independent carrier nor for any delay howsoever caused which may occur to goods in transit. If the goods are damaged in transit it is essential that the delivery sheets be signed "Goods received damaged unchecked".
- (d) Where installment delivery has been agreed each installment shall be deemed to be sold under a separate contract and no failure of or any delay in delivery or any one installment nor any defect in the contents thereof shall entitle the Buyer to treat the contract as repudiated with regard to any of the remaining installments or shall entitle him to defer payment for any other remaining installment.

7. COMPLAINTS

- (a) If upon delivery it is discovered by a reasonable inspection that any part of any consignment be in defective damaged or diseased condition or is otherwise incorrect the Seller must be immediately informed by telephone or fax by the Buyer and the Buyer must confirm any complaint in writing within 5 business days of delivery time being of essence.
- (b) Notwithstanding the foregoing the Buyer shall not be entitled to claim or complain for any reasons unless the goods have been properly and appropriately stored during the period after arrival at their destination. The Buyer must also take all necessary and reasonable measures to mitigate damage or loss without prejudice to any claim of either party.
- (c) No complaint can be considered unless clear proof can be given that the seed sown and alleged to have performed unsatisfactorily was in fact the seed supplied by the Seller and that it was sown on suitably prepared ground treated carefully and correctly throughout and subject only to such conditions as were likely to produce a favourable crop.

8. FORCE MAJEURE

The Seller shall not be liable to the Buyer nor be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the Seller's obligations if the delay or failure was due to any cause beyond the Seller's reasonable control including without prejudice to the generality of the foregoing any Act of God action by any government strike lockout or any other industrial actions or trade disputes (whether involving employees of the Seller or of a third party) riot or civil commotion breakdown of machinery power failure fuel shortage loss and/or detention at sea failure of crop or loss or detention in transit.

9. DEMURRAGE

Any claim arising from delay in delivery arrival or discharging of vehicles that is caused by the Buyer shall be charged to the Buyer and be the Buyer's liability.

10. PAYMENT

- (a) Unless otherwise indicated on the Seller's Contract of Sale all payments are due to be received in pounds sterling within 28 days of the date of dispatch and are payable at the address on the Seller's invoice.
- (b) If the Buyer shall fail to make payment in full in accordance with sub paragraph (a) of this condition then (without prejudice to any other rights of the Seller) the Buyer shall without any need for the Seller to give notice become liable to pay to the Seller interest on the amount for the time being unpaid at the rate of 10% calculated from the due date of payment until the date of actual payment as well after as before any judgement and –
- (i) the Seller shall be entitled to suspend all or any other deliveries to be made under that or any other contract with the Buyer. In such event the Buyer shall not on any respect be released from any obligations to the seller under that or any such other contract or
- (ii) Instead of suspension in accordance with paragraph (i) above the Seller shall be entitled to terminate the relevant contract or any other contract with the Buyer in accordance with condition 17 below and to claim damages from the Buyer for breach.
- (c) Where carriage, packing, pallets or other charges as stated separately from the price they will nevertheless be payable by the Buyer at the same time as if they formed part of the price and shall be treated as such.
- (d) The Seller reserves the right to deduct or set off any amount owed by the Buyer to the Seller, subsidiaries or associated companies if in the Seller's sole opinion it considers that any of the Buyers obligations may not be met.

11. PROPERTY AND RISK

- (a) Notwithstanding delivery and the passing of risk in the goods, the property in the goods shall not pass to the buyer until the Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- (b) Until such time as the property in the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee, but shall be entitled to resell or use the goods in the ordinary course of its business. The Buyer shall account to the Seller for the proceeds of any sale or other disposal of the goods, including insurance proceeds. In the case of seed which has been mixed with similar seed, the Buyer shall further account for the proportion attributable to the goods of the like proceeds of the mixed bulk. The Buyer shall keep all such proceeds separate from any monies or property of the Buyer and third parties and shall keep records sufficient to identify the goods and (where the goods are mixed with other goods) the proportion of the mixed bulk represented by the goods.
- (c) Risk passes to the Buyer on delivery of the goods whether or not property has passed.

12. PALLETS

- (a) Unless otherwise agreed in writing pallets or returnable chemical packages or containers on or in which goods are supplied remain the Seller's property and shall be returned within 28 days of delivery in good condition. Any such pallets, packages or containers not so returned shall be paid for within 28 days. Alternatively where goods are delivered on pallets suitable pallets may be exchanged at the time of delivery.
- (b) If any charges are made to or costs incurred by the seller howsoever as a result of non-payment for or non return of pallets the Seller shall pass on such charges or costs which shall be met by the Buyer in full.

13. LATENT DEFECTS

- (a) Diseases of plants can be transmitted by the wind, by insects, by animals or by human agencies and may be seed-borne. The seller believes the goods hereby sold to be free from latent defects but it is not a condition of sale nor does the Seller warrant that any goods sold shall be free from such defects and the Seller will not be responsible in any way for the resultant crop.
- (b) Where specially treated or tested seed is offered the Seller's assurance is limited to the fact that the treating or testing to the specification quoted has been carried out beyond this assurance it cannot accept any liability.
- (c) In particular and without prejudice to the generality of this Clause although every care is taken in the selection of seed it is not a condition of sale nor does the Seller warrant that the seed sold is free of Pea Bacterial Blight or in the case of cereal seed loose smut or leaf stripe and the Seller will not accept any liability whatsoever for any damage direct or consequential which the Buyer might suffer as a result of the presence Pea Bacterial Blight, loose smut or leaf stripe in the seed sold.

14. LIMITATION OF SELLER'S LIABILITY

- (a) Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at common law or under the express terms of the contract for any indirect or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Buyer, except as expressly provided in these conditions.
- (b) If any goods delivered by the Seller prove damaged or defective then the Seller's liability (if any) hereunder shall be limited to either :
- (i) replacing the goods (at the Seller's sole discretion) or
- (ii) refunding all payments made to the Seller by the Buyer for the goods provided however that the Buyer shall have given notice of such defect in accordance with condition 7 hereof provided also that the Seller shall not be under any liability for:-
- (y) any defects in the goods which could not reasonably have been discovered by the Seller prior to delivery and for any defects in the goods occurring without any negligence on the part of the Seller.
- (z) any latent defects referred to in Clause 13.

NB The price of all goods offered for sale is based on the foregoing limitations upon the Seller's liability and would be greater if a more extensive liability were required to be undertaken by the Seller. In accepting the seed upon these conditions, the Buyer acknowledges that the limitations of the Seller's liability are fair and reasonable.

15. INDEMNITY

- (a) If the Seller is found liable in respect of any claim made against it for infringement of any letters patent, copyright, registered design, trademark or other intellectual property rights of any other person which may arise as a result of the Seller carrying out instructions given by the Buyer, the Buyer hereby agrees to indemnify and keep indemnified the Seller from and against all or any such claim and against all costs (including legal costs) damages losses (including losses of profit) and demands arising in respect of any such claim.
- (b) The Buyer shall indemnify the Seller in respect of any liability incurred by the Seller as a result of any damage or injury whatsoever to any person or to any property And against all actions, suits, claims, costs (including legal costs) charges or expenses arising in connection with the Goods whether caused by negligence of the Seller its employees or agents or otherwise or not except to the extent that the Seller is liable under these Conditions.
- (c) In the event of any breach of the terms of any contract for the sale of the Goods the Buyer shall indemnify and keep indemnified the Seller against all losses (including Losses of profit) costs (including legal costs) claims, damages or other Injury or the like which the Seller incurs as a result of the Buyer's breach.

16. TRADEMARKS

The Buyer shall not in selling its products or promoting the sale thereof make any reference to use any of the Seller's trademarks or brand names without the Seller's prior written consent.

17. DEFAULT AND INSOLVENCY

- (a) Without prejudice to any other right and remedies, the Seller may by notice in writing to the Buyer terminate any contract forthwith if:
- (i) the Buyer shall commit any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of that or any other contract with the Seller and on its part to be observed or performed PROVIDED that if such breach is remediable the Seller has previously given the Buyer notice thereof and the same has not been remedied within 7 days thereafter.
- (ii) the Buyer makes or negotiates for any arrangements or composition with its creditors generally or permits any judgement against it to remain unsatisfied for 7 days.
- (iii) being an individual the Buyer shall have a bankruptcy order made in respect of him or
- (iv) being a company the Buyer shall call any meeting of its creditors or have a receiver of all or any part of its assets or an administrator appointed or enter into Liquidation or
- (v) the Buyer purports to cancel that or any other contract with the Seller.

(b) In the event of such termination

(i) the Seller shall be entitled to repossess any goods which are in the possession or control of the Buyer and the property in which remains with the Seller and for such purpose to enter into and upon the premises of the Buyer and to be paid damages by the Buyer for any depreciation in value of the goods by reason of the use handling or storage thereof or otherwise occurring after delivery to the Buyer

(ii) the Seller shall be entitled by notice in writing to the Buyer to declare (and there shall forthwith become) immediately due and payable any amounts outstanding from the Buyer to the Seller under that or any other contract.

18. ARBITRATION

Any dispute (other than a claim for an unpaid debt and as provided under (c) below) arising out of this contract shall be referred to arbitration as follows:

(a) In the case of a dispute between a member of the National Farmers Union for England and Wales, or a member of the National Farmers Union of Scotland and a member of the United Kingdom Agricultural Supply Trade Association, the dispute shall be referred to arbitration under the rules for the conduct of arbitration jointly agreed between those three organizations.

(b) In every other case the dispute shall be referred to arbitration in accordance with the arbitration rules of the United Kingdom Agricultural Supply Trade Association, 3 Whitehall Court, London SW1A 2EQ.

(c) If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of arbitrators to resolve or if a dispute of necessity involves a third party who is not subject to arbitration, either party before the time for commencing arbitration proceedings has expired may, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the courts. Should such consent be unreasonably withheld or no answer received within 28 days, the party making the request shall be at liberty to commence Court proceedings, leaving it to the other party if the other party so wishes to apply for a stay of proceedings involving the arbitration clause. The Court will then decide whether the arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started shall not continue to run) until whichever shall be the later of the expiry of 28 days from the request above referred to and the determination of any Court proceedings commenced within that period

19. TIME LIMIT FOR CLAIMING ARBITRATION

Arbitration proceedings must be commenced as regards claims relating to quantity or quality within 28 days from the arrival of the goods at their ultimate destination in the UK and as regards technical claims within 90 days from the last day of the contract period. Subject to any special conditions relating to leave being granted to institute Court proceedings contained in the arbitration rules of the United Kingdom Agricultural Supply Trade Association, or those agreed between them and the National farmers Union, whichever is applicable, the making of an award shall be a condition precedent to any right of action by either party or any person claiming under either of them, so that if arbitration proceedings regarding any claims are not instituted within the time limit prescribed all causes of action relating to the claim, whether by way of arbitration or in any courts of law, are deemed time barred and waived.

20. HEADINGS

Clause headings in this contract are for reference purposes only and do not form part of the contract.

21. These general conditions supersede all earlier terms and conditions of Hubbards Seeds.

22. GENETICALLY MODIFIED ORGANISMS

The seeds which are supplied are conventional varieties bred from parent plants which have not been genetically modified. The methods used in the breeding and development of these varieties include procedures aimed at minimizing the presence of adventitious Genetically Modified Organisms (GMO). Production of seed is carried out in open fields in natural conditions in which there is free circulation of pollen. Production may take place in areas where the growing of genetically modified varieties is authorized. It is therefore not possible to prevent the occurrence of adventitious GMO and to guarantee that the seed lots comprising any delivery are free from all traces of GMO. Where appropriate, samples of seed have been tested in order to comply with applicable seed legislation and for adventitious GMO presence, but we give no guarantee that the seed is GMO free and can accept no liability for any damage whatsoever arising from the possible occurrence of adventitious traces of GMO.