

# GENERAL TERMS AND CONDITIONS

## Condition 1 . Applicability

- 1.1 In these terms and conditions seller means Syngenta Seeds Limited Registered in England No 345486 Registered Office Syngenta Limited, European Regional Centre, 30 Priestley Road, Surrey Research Park, Guildford, Surrey GU2 7YH, United Kingdom. The terms and conditions set out in this document form part of the contract between seller and buyer for the sale and purchase of the goods ("the Contract"), to the exclusion of all other terms and conditions (including any terms or conditions which buyer purports to apply under any purchase order, confirmation of order or similar documents) unless otherwise expressly agreed in writing.
- 1.2 All orders for goods by buyer from seller shall be deemed to be an offer by buyer to purchase the goods subject to these terms and conditions.
- 1.3 The buyer must ensure that the terms of its order are accurate.
- 1.4 No order which seller has accepted may be cancelled by buyer except with the written agreement of seller and on the terms that buyer shall indemnify seller in full against all losses (including loss of profit) costs, damages, charges and expenses incurred by seller as a result of such conditions.

## Condition 2 . Offers and contracts

- 2.1 The seller will not be bound by any quotation given and shall have the power to vary or withdraw a quotation at its discretion at any time. Prices quoted are exclusive of any applicable tax.
- 2.2 The seller reserves the right to vary its prices. The price for the goods shall be the price set out in the seller's published price list current at the date seller issues the acknowledgement of order.

## Condition 3 . All orders are subject to availability of the goods, which is dependent on crop and processing results.

If there is reduced availability of the goods for any reason following receipt of the buyer's order, the seller shall be entitled to allocate the available goods at its discretion and the buyer's order shall be deemed to be reduced to the quantity the seller actually delivers and the seller shall not be liable to the buyer in connection with such reduced supply.

## Condition 4 . Supply

- 4.1 Goods shall be delivered by the seller to nominated delivery points previously agreed in writing by the seller.
- 4.2 Any dates specified for the delivery of the goods are approximate only. If no dates are so specified delivery will be within a reasonable time in conformity with the sowing or planting season. Time of delivery shall not be of the essence of the Contract. Subject to the other provisions of these terms and conditions seller will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of goods (even if caused by seller's negligence).
- 4.3 The seller shall be entitled to deliver the goods in instalments. Where the goods are delivered in instalments failure by seller to deliver any one or more of the instalments in accordance with these terms and conditions or any claim by buyer in respect of any one or more of the instalments shall not entitle buyer to treat the Contract as a whole as repudiated.

## Condition 5 . Return of goods

The buyer shall not be entitled to return goods except in exceptional circumstances with the prior written agreement of the seller. However, under no circumstance will seller consider acceptance of returned goods when the original packaging has been opened or tampered with. The seller will make an administration charge of £100 as a condition of returning goods.

## Condition 6 . Prices

- 6.1 Prices set out in seller's price lists are inclusive of the cost carriage to destinations within Great Britain PROVIDED HOWEVER that where the value of the Contract is less than £25.00 seller may charge buyer for the full cost of carriage. Where seller receives 'cash with order' seller shall not charge buyer for the cost of carriage to destinations within Great Britain irrespective of the value of the Contract.
- 6.2 Where the place of delivery required by buyer is outside Great Britain, seller may charge buyer for the full cost of delivery to such place of delivery.
- 6.3 Where the subject matter of the Contract is for boxes of young plants and/or seedlings seller shall charge buyer a surcharge of £10.00 per delivery PROVIDED HOWEVER that where buyer has agreed under the Contract to purchase six or more boxes of young plants and/or seedlings no surcharge shall be charged.

## Condition 7 . Payment

- 7.1 The seller may invoice buyer for the goods at any time after delivery (including for the avoidance of doubt invoicing each instalment of the goods following delivery of that instalment). Payment for the price of the goods is due within 30 days of the date of invoice. Time for payment shall be of the essence. If buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) seller may (i) charge buyer interest (both before and after judgement) at the annual rate of 18% until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest), (ii) cancel and/or suspend any further deliveries under any contract between the seller and buyer.
- 7.2 If buyer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory), or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the buyer or for the granting of an administration order in respect of the buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the buyer, or the buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or the buyer ceases to trade, or the seller reasonably believes that any of these events is about to occur then without prejudice to any other right or remedy available to seller under the Contract seller shall be entitled to cancel the Contract or suspend any further deliveries under the contract without any liability to buyer and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any agreement or arrangement to the contrary.

## Condition 8 . Reservation of ownership

- 8.1 Risk of damage to or loss of the goods shall pass to buyer at the time of delivery or deemed delivery (whichever is earlier).
- 8.2 The property in the goods (both legal and equitable) shall not pass to buyer until seller has received in full (in cash or in cleared funds) the price for the goods plus all applicable sales tax and carriage costs (if any) and all other sums (whether payable under the Contract or not) due and owing from buyer to seller.
- 8.3 Until the property in the goods has passed to buyer, buyer shall:
  - 8.3.1 hold the goods on a fiduciary basis at seller's bailee
  - 8.3.2 store the goods (at no cost to seller) separately from all other goods of buyer or third parties and identify them as seller's property
  - 8.3.3 not destroy or deface any identifying mark on the goods or their packaging
  - 8.3.4 keep the goods insured on seller's behalf for the full price of the goods against 'all risks' to the reasonable satisfaction of seller and on request produce the policy of insurance to seller
  - 8.3.5 hold all proceeds of insurance referred to in Condition 8.3.4 on trust for seller and not mingle them with any other money or pay the proceeds into an overdrawn bank account.
- 8.4 Notwithstanding that the goods (or any of them) remain the property of seller buyer may sell the goods in the ordinary course of the seller's business at full market value for the account of seller. Any such sale shall be a sale of seller's property by buyer on buyer's own behalf and buyer shall deal as principal when making such sales. Until the property in the goods passes from seller the entire proceeds of sale shall be held in trust for seller and shall not be mingled with any other money nor be paid into an overdrawn bank account and shall be at all material times identified as seller's money.
- 8.5 Notwithstanding that the goods (or any of them) remain the property of seller buyer may sow the goods. Until the property in the goods passes from seller all plants produced from the goods shall be the property of seller and held in trust for seller and shall be stored separately (at no cost of seller) from all other plants of buyer or third parties and shall be identified as the seller's property.
- 8.6 The buyer shall not pledge by way of any security for any indebtedness use any of the goods or plants which are the property of seller. Without prejudice to any other rights of seller, if buyer does so all sums owing to seller shall forthwith become due and payable.
- 8.7 At any time before the property in the goods has passed to buyer seller may by written notice end the buyer's right to sow and sell the goods and buyer shall immediately return the goods to seller (at buyer's cost). After giving such notice to buyer he shall no longer be in possession of the goods with the consent of seller and seller and/or its representatives may enter any premises where the goods are or are reasonably believed to be and remove the goods pending receipt of full payment for them.
- 8.8 Nothing in this Condition 8 shall change buyer's obligation to pay for the goods.

## Condition 9 . Liability and warranty

- 9.1 The following provisions set out the entire liability of the seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the buyer in respect of: any breach of these terms and conditions; and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.
- 9.3 Nothing in these terms and conditions excludes or limits the liability of the seller for death or personal injury caused by the seller's negligence or for fraudulent misrepresentation.
- 9.4 Subject to conditions 9.2 and 9.3:

the seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

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 law or under the express terms of the Contract for any indirect, consequential, incidental or special loss or damage, costs, expenses (whether or not the seller has been advised of the possibility of such loss, damages, costs or expenses) or any claims for consequential compensation whatsoever (whether caused by negligence of the seller or its employees, agents or sub-contractors) which arise out of or in connection with the Contract; the seller shall not be liable to the Buyer for any loss of profit, loss of business, loss of business opportunity, loss of revenue, depletion of goodwill arising out of or in connection with the Contract or otherwise.
- 9.5 The seller shall not be liable for any claim including negligence unless it is notified to seller in accordance with Condition 11. The claim shall be documented in such a manner that it can be verified by seller or a third party.
- 9.6 The buyer is under a duty to mitigate any claim buyer may have against seller.
- 9.7 Goods sold by seller are guaranteed to comply at the time of delivery with U.K./E.U. regulations currently in force.
- 9.8 In the event of any goods sold not being of the correct species, or any goods of the correct species and type proving defective in varietal purity, seller may replace the defective goods free of charge to buyer or will refund all payments made by buyer in respect of the defective goods and this shall be the limit of seller's obligation and liability in such circumstances.
- 9.9 Disease of plants can be transmitted by the wind, by insects, by animals or human agencies and may be seed borne. The seller believes the goods hereby sold to be free from latent defect but it is not a condition of sale nor does seller warrant that any goods sold shall be free of such defect and will not be responsible in any way for the resultant crop.
- 9.10 THE SELLER IS NOT LIABLE FOR INAPPROPRIATE USE, STORAGE, PROCESSING, TREATMENT OR REPACKING OF THE GOODS OR ANY ACTS OR OMISSIONS OF THE BUYER OR THIRD PARTIES THAT AFFECT THE GOODS OR THEIR PERFORMANCE.
- 9.11 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.

**Condition 10 . Use**

10.1 The goods supplied by seller are to be used solely for the production of crops for human and animal consumption.

**Condition 11 . Defects, complaint terms**

- 11.1 The buyer shall be deemed to have examined the goods on, or as soon as possible after delivery to determine;
- whether the correct goods have been delivered
  - whether the quantity of delivered goods is in conformity to the contract
  - whether the description of the delivered goods is in conformity to the agreed quality standards or, if no quality standards were agreed upon, to usual standards.
- 11.2 The buyer shall report in writing to seller any alleged defects within 7 working days from delivery. The report shall make reference to lot number, delivery note and/or invoice of seller.
- 11.3 The buyer shall report latent defects in writing to seller within 7 working days from discovering them. . The report shall make reference to lot number, delivery note and/or invoice of seller.
- 11.4 In case of a dispute about germination, varietal purity, trueness to type, genetical or technical purity remaining unsolved, either party may request an examination of the goods by NIAB . The cost of such examination shall be borne by the party against which NIAB makes its finding. The finding of NIAB will be binding on both parties, notwithstanding the right of the parties concerned to submit to the English Courts any disputes about the consequences of the NIAB findings.

**Condition 12 . Product information**

- 12.1 All information given in sellers catalogue or otherwise provided by seller, by any agent or representative on seller's behalf, relating to varieties, varietal characteristics or periods of maturity or otherwise relating to the performance of the goods, is given for general guidance only. Prospective customers are advised that any information so given or proved does not constitute a representation by seller as to matters and should not be relied on as such, neither does it constitute any warranty on seller's part.
- 12.2 All seeds offered to which the E.U. regulations apply are "Standard Seeds" unless otherwise specifically designated as "Certified". Such seeds are offered as complying with the "E.U. Rules and Standards" or as complying with "Legal Standards" as laid down in these regulations.
- 12.3 In relation to varieties covered by Plant Breeders Rights Protection, it is an offence to offer for sale reproduced seed/plants. Any such transaction would be subject to charge of the Plant Breeders Rights levy appertaining at the time and payable to the Breeder or Breeders' Agent.
- 12.4 When goods are described as "Hybrid" whether F1, double cross, or the like, plants grown from them cannot be relied upon to yield seed with the same characteristics, and in many cases a complete breakdown in the strain will occur. Growers should therefore be warned not to attempt to save from the produce of "Hybrid" varieties.
- 12.5 Owing to the lack of 100 per cent cross pollination in certain F1 hybrid varieties weak and usual dwarf inbred plants, sometimes known as "Sibs" can be seen in the plant beds. These should be left and not planted.
- 12.6 Where goods have been treated with a liquid or powder to control pests or disease or have been fumigated, pelleted or rubbed, the particulars of purity and germination are based on tests made before application of the treatment, fumigation, pelleting or rubbing. The goods are then re-tested to conform with "E.U. Statutory Standards".
- 12.7 Vegetable seeds sold by seller, other than those known as Precisem Seeds, conform to minimum germination percentage or better as laid down by E.U. regulations. Condition 13 . Advice for cultural practice
- Any recommendation given by seller relating to the use of the goods in response to a specific enquiry by buyer or otherwise is given in good faith but should not be relied upon unless confirmed in writing by the seller. It is the responsibility of buyer to satisfy itself of the suitability of the goods for use in local conditions.

**Condition 14 . Force majeure**

- 14.1 The seller shall not be liable to buyer in any manner or deemed to be in breach of Contract (subject to Condition 9) because of any delay in performing or failure to perform any of seller's obligations under the Contract if the failure or delay was due to any cause beyond seller's reasonable control.
- 14.2 Without prejudice to the generality of Article 14.1 the following shall be included as causes beyond seller's control: governmental actions, war, threat of war, riot, civil disturbance, sabotage or requisition, act of God, fire, flood, epidemic or accident, labour disputes including disputes involving seller's workforce, or inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour.
- 14.3 If seller is affected by force majeure seller shall notify buyer of the nature and extent of the circumstances in question.
- 14.4 If seller claims force majeure and is accordingly relieved from performing its obligations under the Contract for a continuous period of two months then either party may terminate the Contract by giving the other party not less than 14 days notice in writing. Termination under the provisions of this Condition 14 shall not entitle buyer to compensation.

**Condition 15 . Disputes and applicable law**

- 15.1 In the case of any dispute between the seller and buyer the Contract shall be governed by and construed in accordance with English Law and both parties shall submit to the exclusive jurisdiction of the English Courts.

**Condition 16 . Protection of original varieties by means of Plant Breeders' Rights or contractual clause.**

- 16.1 For varieties for which Plant Breeders' Rights have been applied or granted, only a single flower production or plant production as the case may be is allowed. This clause has to be maintained by the buyer toward his clients as perpetual covenant. Violations lead to an immediate claimable fine of 40p per propagated plant. The seller retains as license holder the right to recover the actual sustained damage from the violator.
- 16.2 The seller or his agent is allowed to enter the premises of the buyer for control of the plant production as well as appointing an independent third party to review the books of the buyer. The buyer will give his co-operation to this.
- 16.3 Initial material of varieties belonging to the sector of ornamental plant products, which are protected by plant breeders' rights applied for or granted in the Netherlands and/or any other country or by virtue of a perpetual clause in a contract, may not be used for purposes of propagation or resale.
- 16.4 Buyer will market, sell or transfer the plants produced by him only under the variety name and will provide with every plant marketed, sold or transferred a label containing the series name and the cultivar name.
- 16.5 Initial material supplied may only be used by the buyer for the cultivation of cut flowers and/or other floricultural end products on the premises of the buyer. This condition shall not apply where the goods are vegetable seeds.
- 16.6 The seller shall have the right of access to the buyer's premises or plots under his control where the initial material supplied by the seller is located, in order to inspect or access this material. The seller shall inform the buyer of his visit in good time.
- 16.7 The buyer shall only re-sell the end product deriving from the cultivation material bought and received by him from the seller, under the respective (variety) name, and possible brand name.
- 16.8 If the buyer comes across a mutant of the protected variety he shall communicate this fact immediately by registered mail to the holder of the plant breeders' rights.
- 16.9 At the written demand of the holder of the plant breeders' right the buyer shall submit test material obtained from the mutant to the holder of the plant breeders' right, and do so within two months of receiving the letter.
- 16.10 The buyer hereby acknowledges that the discoverer of a mutant requires the permission of the breeder(s) of the source variety to commercially produce the mutant variety.
- 16.11 More explicitly, the buyer acknowledges that the discoverer of a mutant requires the permission of the holder of the plant breeders' rights to the variety from which the mutant is derived to perform the actions mentioned below on all materials obtained from that variety, including materials already harvested, such as flowers, plants and parts of plants:
1. to propagate or multiply (breed) them
  2. to bring them into any condition for purposes of breeding
  3. to offer them for sale
  4. to sell or market them in any way
  5. to export them
  6. to import them
  7. to store them for any of the purposes mentioned above under (1) through (6).