



# Terms of sale

Agrovista UK Limited

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# Agrovista UK Limited terms of sale

The Customer's attention is particularly drawn to clauses 7 Retention of Title and 10 Limitation of Liability.

## 1. Definitions

"Contract" means a contract for the supply of Goods and/or Services made between the Seller and the Customer to which these Terms apply.

"Customer" means the customer ordering Goods or Services from the Seller.

"Goods" means goods, seeds or materials supplied by the Seller to the Customer as set out in the Order Confirmation.

"Order Confirmation" means the order confirmation, delivery note or invoice provided to the Customer by the Seller.

"Seller" means Agrovista UK Limited (Registered in the UK under company number 03525529) whose registered office is at Rutherford House, Nottingham Science and Technology Park, University Boulevard, Nottingham, NG7 2PZ and includes any associated or subsidiary companies owned by the Seller in which the Seller has a controlling interest and any business carried on by any business, division or trading name of the Seller.

"Services" means the services supplied by the Seller to the Customer as set out in the Order Confirmation.

"Terms" means the terms and conditions set out in this document.

## 2. Acceptance and cancellation of order

- I. This Contract is made and all orders are accepted by the Seller on the following Terms. These Terms are the only terms or conditions upon which the Seller supplies the Goods or Services unless expressly approved by the Seller in writing.
- II. Where the Goods being provided is Seed (as defined in schedule 1), the terms in schedule 1 shall supplement these Terms and, to the extent that there is any conflict between these Terms and schedule 1, the terms of schedule 1 shall apply.
- III. An order by the Customer constitutes an offer to purchase the Goods and/or Services in accordance with these terms.
- IV. Orders only become binding on the Seller upon the submission by the Seller to the Buyer of an Order Confirmation.
- V. Orders accepted by the Seller are a binding contract and may only be cancelled with the Seller's prior written consent.
- VI. The Seller reserves the right to amend the Goods or Services if required by any applicable statutory or regulatory requirement.
- VII. The Seller shall not be liable for failure to deliver Goods where the Goods are unavailable for reasons outside the Seller's reasonable control.

### 3. Prices

- I. The price payable for the Goods shall be set out in the Order Confirmation.
- II. All prices quoted exclude VAT and any costs of freight or insurance, unless otherwise specified.
- III. The Seller reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier.
- IV. Orders under £400 including VAT may be subject to a £20 minimum surcharge.

### 4. Payment

- I. Unless otherwise agreed in writing, payment shall be made by the date (the 20th of the following month) shown on the invoice for such Goods ("Due Date").
- II. Interest at 2.5% per month will be charged on all monies outstanding after the relevant Due Date and the Customer shall in addition pay to the Seller all legal and other fees, costs and expenses incurred by the Seller in connection with the collection by the Seller of any payment not made by the said Due Date unless otherwise agreed in writing by the Seller.
- III. If full payment of both the invoice and the interest charges has still not been made within 4 months of the invoice date, then the Seller will commence court proceedings to recover the debt.
- IV. The Seller reserves the right to off-set payments made on account against the oldest outstanding debt if no reference is made to the specific invoices being paid.

### 5. Delivery

- I. Delivery of the Goods shall be completed by the Seller unloading the Goods to the address specified by the Customer, or in the alternative, specified on the Seller's delivery note or, if otherwise agreed, by the Customer loading the Goods at the Seller's premises "Delivery" (N.B. "Deliver" shall be construed accordingly).
- II. Any Delivery date or dates which may be quoted verbally or in writing are estimates only and time of Delivery is not of the essence. The Seller shall not be liable for failure to deliver by such Delivery date or dates, or for any damage or loss arising directly or indirectly out of delay in delivery owing to an event beyond reasonable control ("Force Majeure Event") or the Customer's failure to provide the Seller with adequate Delivery instructions or any other instructions that are relevant to the supply of the Goods. If Delivery is delayed by more than 30 consecutive days, the Customer shall have the option to cancel the delayed Delivery provided that the goods are not in transit.

- III. If the Customer fails to take or accept Delivery of the Goods within three business days of the Seller notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the contract, Delivery of the Goods shall be deemed to have been completed and the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- IV. If the Customer has not taken or accepted Delivery 2 weeks after notification under clause 5iii) above, the Seller may resell or otherwise dispose of part or all of the Goods.
- V. If the Seller delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was Delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- VI. The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **6. Quality of goods and returns of non-defective goods**

- I. The Customer shall inspect the Goods immediately upon Delivery and shall, within 7 days of such Delivery, give notice in writing to the Seller at Rutherford House, Nottingham Science and Technology Park, University Boulevard, Nottingham, NG7 2PZ of all claims on account of shortage, damage to or loss of the Goods or, in the case of services comprising the Goods, inadequate or non-performance. Claims for non-delivery or non-performance must be submitted in writing to the Seller within 7 days after the date of receipt of invoice or delivery note, whichever is the earlier. In the absence of receipt of such written notice within the prescribed time limits, the Seller shall be discharged from all liability in respect of shortage and of loss or damage to the Goods or inadequate or non-performance.
- II. The Seller shall, at its option, repair or replace defective Goods, or refund the price of defective Goods in full provided (a) the Customer complies with paragraph clause 6i) above; (b) the Seller agrees that the Goods are defective; (c) the Customer has not used, altered, or attempted to repair the Goods after giving notice under clause 6i) or (d) the defect has not arisen due to the Customer's failure to follow the Seller's instructions or use of the Goods in a negligent or abnormal way.
- III. The Customer shall return Goods under this clause to the Seller's usual place of business at the Customer's cost.

- IV. The Goods may be returned to the Seller only with the Seller's prior written agreement. In addition to any other conditions, which the Seller may at its discretion impose, any return will be subject to a handling charge of 10% of the invoiced price. Under no circumstances will the Seller agree to a return of the Goods unless the shelf life unexpired is sufficient to enable the Seller to resell the Goods.

## **7. Retention of title**

- I. Risk shall pass on collection of the Goods by the Customer or Delivery of the Goods by the Seller to the Customer. If the Customer fails to collect the Goods or accept Delivery, risk will pass to the Customer at the time the Seller notifies the Customer that the Goods are ready for collection.
- II. Title to the Goods shall remain with the Seller until the earlier of the Seller receiving payment in full or the Customer reselling the Goods. If the latter, the Customer resells the goods as Principal rather than agent and title to the Goods shall pass from the Seller to the Customer immediately before the time at which the resale by the Customer occurs.
- III. Until such time as the Goods are re-sold or payment is made to the Seller (whichever is earlier), the Customer shall store the Goods separately from its own goods, so as to be clearly identifiable as being the property of the Seller, ensuring that they secure and are adequately insured against all usual risks and keeping them free from any charge, lien or other encumbrance.
- IV. A licence is granted by the Customer to the Seller to enter the premises at any time to allow the Seller or its representative to investigate the storage of the Goods and/or to effect their collection.
- V. Subject to 7iv), the Customer has a right to use the Goods in the ordinary course of his business.

In the event of the Customer entering into liquidation or having a winding up order made against him or becoming subject to an administration order or a Receiver or Receiver and Manager being appointed to control his assets or in the event of the Customer being an individual or individuals he or any of them committing any act of bankruptcy or having any bankruptcy petition presented against him or any of them, then the right to use the Goods as set out in this clause 7v) shall cease and the Seller shall have the right to enter the Customer's premises in order to retake possession of the Goods pursuant to 7iv).

## 8. Supply of services

- I. The Seller shall supply the Services to the Customer in accordance with the Order Confirmation in all material respects.
- II. The Seller shall use all reasonable endeavours to meet any performance dates specified in the Order Confirmation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- III. The Seller reserves the right to amend the specification for the Services set out in the Order Confirmation if necessary to comply with any applicable law or regulatory requirement; if the Seller considers in its discretion that any part of the service may cause loss or damage to any goods or property belonging to any person, or personal injury to any person; or if the amendment will not materially affect the nature or quality of the Services. The Seller shall notify the Customer in any event of such amendment as set out in this clause 8iii).
- IV. The Seller warrants to the Customer that the Services will be provided using reasonable care and skill.

## 9. Customer obligations

- I. The Customer shall ensure that the terms of the order are complete and accurate and provide the Seller with such information as it may reasonably require to Deliver the Goods or administer the Services.
- II. The Customer shall:
  - a. provide the Seller with such information and materials as the Seller may reasonably require in order to supply the Services and ensure that such information is complete and accurate in all material respects;
  - b. provide the Seller, its employees, agents, consultants and subcontractors, with access to the Customer's land, property and premises as reasonably required by the Seller for the provision of the Services;
  - c. obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and Services before the date on which the Services are to start or the Goods are to be Delivered;
- III. Comply with any additional obligations set out in the Order Confirmation.
- IV. The Customer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Customer's failure to meet its obligations under clause 6i).

- V. Where the Goods are intended for use under an Extension of Authorisation for minor Use (EAMU) or under a Long Term Arrangement for Extensions of Use (LTAEU), the Customer shall:
- a. obtain a copy of the EAMU or LTAEU and satisfy itself of the effectiveness and conditions of use;
  - b. use the Goods in accordance with the EAMU or LTAEU and not rely solely on the product labelling instructions;
  - c. use the Goods at the Customer's own election and risk;
  - d. indemnify the Seller or its agent or subcontractor in respect of all liability, costs, claims and demands arising from the use of the Goods.

## **10. Limitation of liability**

- I. Nothing in this contract shall limit or exclude the Seller's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation, breach of terms implied by section 2 of the Supply of Goods and Services Act 1982 and of section 12 of the Sale of Goods Act 1979, or defective products under the Consumer Protection Act 1987.
- II. Subject to clause 10i), the Seller shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the contract for loss of profits, loss of sales, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill and any indirect consequential loss.
- III. Subject to clause 10i), the Seller's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the contract shall be limited to the price paid or payable by the Customer under this contract.
- IV. The Seller shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in clause 6ii).
- V. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the contract.
- VI. The Customer is responsible for making its own arrangements for the insurance of any loss.
- VII. This clause 10 shall survive termination of the contract.

## **11. Termination**

Without prejudice to any other rights available to it the Seller shall have the right to terminate all or any contract between the parties or to suspend delivery with immediate effect on giving written notice if:

- I. The Customer fails to pay any monies owing by the Due Date.
- II. The Customer commits any breach of contract.
- III. The Customer goes into liquidation or administration or has a receiver appointed or commits any act of insolvency or bankruptcy.
- IV. The Seller has any reason to doubt the credit-worthiness of the Customer.

## **12. Disputes and set-off**

The Customer will not be entitled to withhold payment of any monies correctly invoiced by and due to the Seller because of any disputed claim against the Seller.

## **13. Personal data**

- I. The parties agree that they are each a Controller (as defined in the General Data Protection Regulation) in relation to personal data processed pursuant to the contract.
- II. The Seller shall Process Personal Data as set out in its privacy policy at <https://www.agrovista.co.uk/privacy-policy> or otherwise available from the Seller on request.
- III. The Seller may record any failure by the Customer to comply with the Seller's credit terms and may make such information available to other organisations to enable them to assess any application for credit.

## **14. Confidentiality**

Each party undertakes that it shall not at any time during the contract and for a period of five years after termination of the contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or supplier of the other party, save to its employees, officers, representatives, sub-contractors or advisers who need to know such information for the purpose of carrying out the party's obligations under the contract or as may be required by law. This clause 14 shall survive termination of the contract.



## 15. General

- I. A notice required or permitted to be given by either party to the other under these terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notice in writing shall include emails.
- II. No waiver by the Seller of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- III. If any provision of the contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the contract and the remainder of the provision in question shall not be affected.
- IV. No variation to these terms shall be binding unless agreed in writing between the authorised representatives of the parties.
- V. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these terms affects the liability of either party for fraudulent misrepresentation.
- VI. Any advice or recommendation given by the Seller or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted on entirely at the Customer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- VII. Different terms and conditions may apply for deliveries made under contract by the Seller on behalf of other companies, copies of these terms and conditions can be obtained directly from the selling company.
- VIII. The Seller may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the contract.
- IX. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- X. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction over any such dispute or claim.

## Schedule 1 – Terms specifically relating to the sale of Seed

These conditions of sale apply to all sales of Seed made by the Seller to the Customer. These terms apply in addition to the terms contained in the main body of this agreement. Where there is a conflict between these terms and the main body of the agreement these terms shall apply. These terms do not apply to the sales of Goods other than Seed.

### 1. Payment

1.1 Payment shall be made on the date as shows on the relevant invoice (always 28 days from the date of delivery).

1.2 No contras are accepted for stock seed against seed contracts.

### 2. Plant Varieties and Seeds Act 1964

The price of any variety which is 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 breeder's rights, there is any change in the rate of royalty payable to the owner of the rights, the price will be adjusted accordingly. Where material is sold as grown on a private royalty arrangement royalties will be collected by the British Society of Plant Breeders (BSPB) and the Customer undertakes to pay such royalties as are due. For the express purpose of monitoring, verifying and enforcing plant breeder's rights, the Company has the right to be provided with the name and address of the grower of the protected variety which is the subject of the sale. Seed sold which is the subject of this contract will comply at the time of delivery with the UK Seed Regulations currently in force. All information whether contained in the Company's catalogue, web site or given by staff, relating to varieties, varietal characteristics or periods of maturity or fitness for any particular purpose or otherwise relating to the performance of Seed, is given for general guidance only, as variation in growing environment and management practices can render such information inaccurate. Customers are therefore advised that any such information given to them does not constitute a representation as to these matters and should not be relied on as such. Customers should satisfy themselves that any Seeds which they order are of a variety performance satisfactory for their requirements and order such Seeds at their own risk. Customers are advised that the Company's staff have no authority to give more than general guidance as described above and the Company will not accept liability for any advice given or opinion expressed by its employees. Such advice is followed, or such opinion acted upon, entirely at the Customers own risk.

Where varieties are protected by Plant Breeders Rights and where produce from this Seed is further sown as farm saved Seed, the grower is legally obliged to pay the equitable remuneration due for its use. Where this sale, relates to hybrid oilseed rape, no further Seed production can be taken from the Seed supplied without the consent of the holder of rights.

### **3. Royalty Area Collection Scheme (RAC)**

The Company reserves the rights to introduce and market varieties through a Royalty Area Collection Scheme (RAC) with the royalties being collected on an area basis on behalf of the Company and the holder of rights through BSPB or an alternative organisation. Where a variety is sold under the Company's RAC the specific details of the terms and obligations will be provided at the point of sale and are deemed to be incorporated into these conditions of sale.

### **4. Genetically Modified Organisms**

Seed supplied under this contract are conventional varieties bred from parent components which have not to the best of the Company's knowledge been genetically modified. The methods used in the breeding, development and production of these varieties include procedures aimed at avoiding the adventitious presence of Genetically Modified Organisms ('GMO's). Seed production is carried out in accordance with national Seed legislation, including stipulated isolation distances, out in open fields in natural conditions in which there is free circulation of pollen. It cannot be excluded that in Seed multiplication areas the authorized growing of GM plants takes place. It is therefore not possible to prevent the adventitious presence of GMO and to guarantee that the seedlets comprising this delivery are free from any traces derived from GM plants. Seed has been sampled and tested for the adventitious presence of GMOs which are commonly known to be used in rapeseed breeding. None of these GMOs have been detected in these tests. However, the Company gives no guarantee that the Seed is GMO free and can accept no liability arising from the adventitious presence of traces of GMO in conventional Seed.

### **5. Complaints**

No complaint under the terms of these conditions of sale can be considered unless clear written proof can be given that the Seed grown and alleged to have performed unsatisfactorily was in fact the Seed supplied 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. The burden of proof shall be on the Customer to establish any defect in the Seed supplied.

## 6. Seed Treatments

Where at the Customer's request any treatment whether chemical or otherwise is supplied to the Seed, the Company's liability shall not extend beyond such treatment being carried out in accordance with the recommendations given by the manufacturer of the chemical in question and the Company accepts no responsibility whatsoever for the effectiveness of such treatment or for any damage direct or consequential which may result there from. Where the Seed has been chemically treated with a liquid or a powder to control pests or diseases, or have been fumigated or pelleted, the purity and germination percentages are based on tests made before the treatment.

## 7. Arbitration

Any dispute arising out of this contract shall be referred to arbitration as follows:

- I. Unless otherwise agreed, the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Ltd, (obtainable from, the registered office of the Association and/or [www.agindustries.org.uk](http://www.agindustries.org.uk)). and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.
- II. Where a dispute as to quality arises regarding Seed which are the subject of two or more contracts identical in terms except as to date and price, then any arbitration may, with the consent of all parties concerned, be held as between the first Seller and the last Customer in the series of transactions as if they were the only contracting parties and any award then made shall, subject to the rights of appeal as provided in the relevant rules, be binding on all intermediate parties in the series of transactions and may be enforced by any such intermediate party against the intermediate contracting party as if a separate award had been made under each contract. All such intermediate contracts shall be made available to the Arbitrators.

- III. 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 lapsed can, 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 invoking 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 not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.
- IV. Arbitration proceedings must be commenced as regards claims relating to quantity or quality within 28 days from the date of delivery of the Seed at the premises of the Customer or at the premises specified by the Customer and as regards technical claims within 60 days from time of delivery. Subject to any special conditions relating to leave being granted to institute court proceedings contained in the arbitration rules of the Agricultural Industries Confederation, 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 limits prescribed all causes of action relating to that claim, whether by way of arbitration or in any court of law, are deemed time barred and waived.

## 8. Claims

Claims based upon those defects of quantity, quality or condition which should be apparent upon reasonable examination shall be made immediately known by email, telephone or fax and written confirmation dispatched within 5 business days of arrival of the Seed at the premises of the Customer or at the premises specified by the Customer. If Seed are damaged in transit it is essential that the delivery sheets be signed "damaged in transit". No claim for such damage can be entertained unless made in writing within 3 days of delivery of Seed, both to the carriers and ourselves. In the case of non-delivery of any packages both the carriers and ourselves must be notified within 14 days of dispatch, and the claim be made in writing within 28 days, from the time of dispatch.