

Syngenta Seeds Limited - Terms and conditions for the sale of vegetable seeds

Your attention is specifically drawn to the provisions of Conditions 2, 3, 8, 10 and 14 which limit Syngenta's liability to buyer.

CONDITION 1 APPLICABILITY

1.1. In these terms and conditions "seller" means Syngenta Seeds Limited registered in England (No 345486) whose registered Office is at European Regional Centre, Priestley Road, Surrey Research Park, Guildford, Surrey GU2 7YH, United Kingdom.

1.2. The terms and conditions set out in this document form part of the contract between seller and buyer for the sale and purchase of vegetable seeds ("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.

1.3. All orders for vegetable seeds ("the goods") placed by buyer shall be deemed to be an offer by buyer to purchase the goods from seller subject to these Conditions and any terms endorsed on any order acknowledgement issued by seller. No offer shall be deemed accepted until seller issues an order acknowledgement (or, if earlier, until seller delivers the goods).

CONDITION 2 ORDERS AND AVAILABILITY

2.1. Buyer must ensure that the terms of its order are accurate.

2.2. 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 buyer's order, notwithstanding that seller has accepted buyer's order, seller shall be entitled to allocate the available goods at its absolute discretion and buyer's order shall be deemed to be reduced to the quantity seller actually delivers and seller shall not be liable to buyer in connection with such reduced supply.

2.3. Seller has a minimum total order value of £1,000 (exclusive of VAT, delivery and any other charges). Seller reserves the right not to supply orders that fall below this minimum value.

CONDITION 3 SUPPLY

3.1. Goods shall be delivered (or attempted to be delivered) by seller to nominated delivery points previously agreed in writing by seller.

3.2. 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 (and shall not be made) of the essence of the Contract. Subject to the other provisions of these 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).

3.3. Seller shall be entitled to deliver the goods in instalments. Where the goods are delivered in instalments, each delivery shall constitute a separate contract and failure by seller to deliver any one or more of the instalments in accordance with these 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.

3.4. If seller attempts to deliver any goods and buyer fails to accept delivery, seller shall be deemed to have delivered the goods on the date that such attempt was made.

CONDITION 4 CANCELLATIONS AND RETURN OF GOODS

4.1. No order which seller has accepted may be cancelled by buyer after the seller has issued an order acknowledgement (or, if earlier, after delivery) except in accordance with these Conditions or with the written agreement of seller.

4.2. Subject to Condition 8.3, buyer shall not be entitled to return goods except in accordance with the terms of Condition 10.

CONDITION 5 QUOTATIONS AND PRICES

5.1. 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 (such as VAT) which must be paid by buyer in addition to the price of the goods.

5.2. Seller reserves the right to vary its prices in respect of any goods ordered at any time until an order is accepted. The price for the goods shall be the price set out in seller's published price list current at the date seller issues its order acknowledgement (or, if earlier, the date seller delivers the goods).

5.3. Prices set out in seller's price lists are inclusive of the cost of carriage to addresses within mainland Great Britain.

5.4. Where the place of delivery required by buyer is to an address outside mainland Great Britain, seller may charge buyer for the full cost of delivery to such place of delivery.

CONDITION 6 PAYMENT

6.1. 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).

6.2. Payment for the price of the goods is due within 30 days of the date of invoice and buyer shall not exercise any right of deduction, set-off or counterclaim. Time for payment shall be of the essence. Payment must be made in the currency stated on seller's invoice by direct bank transfer to seller's nominated account or by such other method as seller may specify or agree from time to time. Seller reserves the right to refuse to accept payments by cash, cheque or any other method and shall not be required to justify such refusal. Seller shall not be obliged to issue buyer with a receipt unless buyer requests one in writing.

6.3. 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 do either or both of the following:

6.3. (i) charge buyer interest (both before and after judgement) and other charges in accordance with the terms of the Late Payment of Commercial Debts (Interest) Act 1998 (or such replacement or consolidation legislation); and

6.3. (ii) cancel and/or suspend any further deliveries under any contract between seller and buyer.

6.4. If buyer makes any arrangement with its creditors, or becomes subject to an administration order, or has a receiver, manager, administrator or administrative receiver appointed over any or all of its business, assets or property, is declared bankrupt, has a resolution passed or a petition presented to any court for the winding-up of buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of buyer, or buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or buyer ceases to trade, or seller reasonably believes that any of these events (or any analogous event in any jurisdiction) is about to occur then, without prejudice to any other right or remedy available to seller under the Contract or otherwise, 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 7 RESERVATION OF OWNERSHIP

7.1. Risk of damage to or loss of the goods shall pass to buyer at the time of delivery or deemed delivery (whichever is earlier).

7.2. 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) which are at the time of delivery or which will afterwards become due and owing from buyer to seller.

7.3. Until the property in the goods has passed to buyer, buyer shall:

7.3.1. hold the goods on a fiduciary basis at seller's bailee

7.3.2. 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

7.3.3. not destroy or deface any identifying mark on the goods or their packaging

7.3.4. 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

7.3.5. hold all proceeds of insurance referred to in Condition 7.3.4 on trust for seller and not mingle them with any other money or pay the proceeds into an overdrawn bank account.

7.4. Notwithstanding that the goods (or any of them) remain the property of seller buyer may sell the goods in the ordinary course of 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.

7.5. 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 seller's property.

7.6. Buyer shall not pledge or use any of the goods or plants which are the property of seller by way of any security for any indebtedness. Without prejudice to any other rights of seller, if buyer does so all sums owing to seller shall forthwith become due and payable.

7.7. At any time before the property in the goods has passed to buyer seller may by written notice end 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.

7.8. Nothing in this Condition 7 shall affect buyer's obligation to pay for the goods.

CONDITION 8. LIABILITY AND WARRANTY

8.1. The following provisions set out the entire liability of seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to buyer and any third party in respect of:

8.1.1. any breach of a Contract incorporating these Conditions; and

8.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

8.2. 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.

8.3. Nothing in these terms and conditions excludes or limits the liability of seller for (i) death or personal injury caused by seller's negligence; or (ii) fraud; or (iii) breach of any implied term or condition as to title.

8.4. Subject to Condition 8.3:

8.4.1. seller's total liability to buyer and any third party 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

8.4.2. seller shall not be liable to buyer or any third party 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, or otherwise, for any indirect, consequential, incidental or special loss or damage, costs, expenses (whether or not 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 seller or its employees, agents or sub-contractors or otherwise) which arise out of or in connection with the Contract;

8.4.3. seller shall not be liable to 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 (whether caused by negligence of seller or its employees, agents or sub-contractors or otherwise).



Terms and conditions - continued

8.5. Seller shall not be liable for any claim (including negligence) unless it is notified to seller in writing and (if applicable) in accordance with Condition 10. The claim shall be documented in such a manner that it can be verified by seller or a third party.

8.6. Buyer is under a duty to mitigate any claim buyer may have against seller.

8.7. Goods sold by seller are guaranteed to comply with U.K./E.U. regulations in force at the time of delivery.

8.8. Disease of plants can be transmitted by the wind, by insects, by animals or human agencies and may be seed borne. 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 (subject to Condition 8.3) seller will not be responsible in any way for the resultant crop as a result of any such latent defect.

8.9. Subject to Condition 8.3, Seller is not liable for inappropriate use, storage, processing, treatment or repacking of the goods or any acts or omissions of buyer or third parties that affect the goods or their performance.

CONDITION 9 USE

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

CONDITION 10 DEFECTS, COMPLAINT TERMS

10.1. Buyer shall be responsible for examining the goods on, or as soon as possible after, delivery (and in any event within 7 days of delivery) to determine:

- 10.1.1. whether the correct goods have been delivered;
- 10.1.2. whether the quantity of delivered goods is in conformity to the contract; and
- 10.1.3. 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.

10.2. Without prejudice to any other terms and conditions of the Contract, seller shall only be liable to buyer in respect of:

- 10.2.1. defects in goods (whether in terms of description, quantity or quality) which are apparent (or ought reasonably to have been apparent) upon a visual inspection of the goods if buyer reports such alleged defects in writing to seller within 7 days from delivery; and
- 10.2.2. latent defects in the goods, if buyer reports such latent defects in writing to seller within 7 days from discovery.

In each case, the report shall make reference to lot number, delivery note and/ or invoice of seller.

10.3. In case of a dispute about germination, varietal purity, trueness to type, genetic or technical purity remaining unresolved, 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 findings 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.

10.4. In the event of any goods sold not being the species ordered by buyer, or any goods being of the correct species and type but proving defective in varietal purity, seller shall either (at the buyer's election) replace the defective goods free of charge to buyer or refund all payments made by buyer to seller in respect of the defective goods. Subject to Condition 8.3, this Condition 10.4 shall be the limit of seller's obligation and liability and the buyer's sole remedy in such circumstances.

10.5. In the event that the quantity delivered by seller is less than the quantity ordered, seller shall either (at its absolute discretion) deliver any shortfall within a reasonable period of time, or refund the amount paid by buyer to seller in respect of the shortfall of goods. Subject to Condition 8.3, this Condition 10.5 shall be the limit of seller's obligation and liability and the buyer's sole remedy in such circumstances.

CONDITION 11 PRODUCT INFORMATION

11.1. 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.

11.2. 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.

11.3. 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.

11.4. 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.

11.5. 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.

11.6. 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".

11.7. 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 12 ADVICE FOR CULTURAL PRACTICE

12.1. 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 seller. It is the responsibility of buyer to satisfy itself of the suitability of the goods for use in local conditions.

CONDITION 13 FORCE MAJEURE

13.1. Subject to Condition 8.3, seller shall not be liable to buyer in any manner or deemed to be in breach of Contract 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 ("force majeure").

13.2. Without prejudice to the generality of Condition 13.1 the following shall be included (without limitation) as causes beyond seller's control: governmental actions, war, threat of war, riot, civil disturbance, sabotage or requisition, act of God, adverse weather, 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.

13.3. If seller is affected by force majeure, seller shall notify buyer within a reasonable period of time of the nature and extent of the circumstances in question.

13.4. 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 13 shall not entitle buyer to compensation other than a reimbursement of the price paid for goods not received.

CONDITION 14 PROTECTION OF ORIGINAL VARIETIES BY MEANS OF PLANT BREEDERS' RIGHTS OR CONTRACTUAL CLAUSE

14.1. 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 buyer toward his clients as perpetual covenant. Violations lead to an immediate claimable fine of 40p per propagated plant. Seller retains as license holder the right to recover the actual sustained damage from the violator.

14.2. Seller or his agent is allowed to enter the premises of buyer for control of the plant production as well as appointing an independent third party to review the books of buyer. Buyer will give his co-operation to this.

14.3. If 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.

14.4. At the written demand of the holder of the plant breeders' right 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.

14.5. 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.

14.6. More explicitly, 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 to:

- 14.6.1. propagate or multiply (breed) them
- 14.6.2. bring them into any condition for purposes of breeding
- 14.6.3. offer them for sale
- 14.6.4. sell or market them in any way
- 14.6.5. export them
- 14.6.6. import them
- 14.6.7. store them for any of the purposes mentioned above under (1) through (6).

15. All notices for seller shall be sent by buyer to seller c/o Syngenta Seeds B.V., Westeinde 62, 1601 BK Enkhuizen, Netherlands, or to such other address as seller notifies to buyer from time to time.

16. A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999.

17. These Conditions, together with seller's confirmation of order constitute the entire agreement between buyer and seller. Buyer agrees that it has not relied and shall not rely on, nor have any remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as set out in the in these Conditions or is otherwise endorsed on seller's confirmation of order.

18. Buyer may not assign, sub-contract or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of Seller.

19. Any delay or failure on the part of seller in enforcing its rights under the Contract shall not imply a waiver of its rights to enforce that particular right or any other right.

20. If part or all of any provision of the Contract is held by a court or other competent authority to be invalid, void, voidable or unenforceable (in whole or in part), that whole or part provisions shall be deemed severable and the validity of the remainder of the provision in question and the other provisions of the Contract shall be unaffected.

21. This Contract and any issues or disputes arising out of or in connection with it (whether such issues or disputes are contractual or non-contractual in nature) shall be governed by and construed in accordance with English law and both parties hereby irrevocably submit to the exclusive jurisdiction of the English courts in respect of any such issues and disputes.

These Conditions apply to all orders placed on or after 1 January 2011.

These terms and conditions are available in larger font on request.



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