

EBBAGE SEEDS. CONDITIONS OF SALE

These conditions of sale apply to all sales of Seed made by Ebbage Seeds Limited (“the Company”) to the Buyer. They may not be varied except in writing signed by the Company. In particular, under no circumstances will the Company sell Seed on the Buyer’s terms of purchase.

Clause 1. Availability

Since seeds are growing organisms and their growth is subject to pests, disease and climatic conditions, all sales of United Kingdom grown seeds are subject to safe harvest. The Company reserves the right in the event of market shortages of Seed to apportion such supplies as become available among their customers at their sole discretion. Where Seed is sold which is imported, its sale is subject to supplies being made available to the Company by its normal supplier with whom the contract for the supply has been placed. In the event of failure of such supplies from abroad, and the Seed not being replaceable from other sources at a price no greater than that payable under the present contract, this sale agreement will be deemed to be cancelled without any liability on either party providing notice of such failure is given to the Buyer at the earliest opportunity.

Clause 2. Levies, Currency fluctuations and increased charges

Where Seed supplied is of foreign origin the Company reserves the right to alter the prices payable without notice after the date of contract in the event of an imposition of or increase in any tariff or import levy applied to the Seed. Such alteration of price will be sufficient to offset such importation tariff or import levy. Any increase in shipping, marine insurance, freight or landing charges between the date of contract and arrival of the vessel is for the Buyers account. If the Seed which is the subject of this contract are of non-UK origin, the Company reserves the right to adjust the price payable by the Buyer so as to reflect any alteration in the value of the £ sterling in terms of the currency of purchase between the date of sale and the rate payable in importation.

Clause 3. Latent defect

Disease of plants grown for Seed can be transmitted by the wind, by insects, by animals or by human agencies and may be seed borne or soil borne. The Company believes the seed hereby sold to be free from latent defect, but it is not a condition of sale nor does the Company warrant that any seed sold shall be free from such defect and the Company will not be responsible in any way for the condition or performance of the resultant crop.

Clause 4. Limitation of liability

In the event of any Seed sold not complying with the express terms of the contract of sale, or any seeds of the correct species and type proving defective in varietal purity, the Company will at its option either replace the defective Seed free of charge to the Buyer or it will refund all payments made by the Buyer in respect of the defective Seed. This liability shall be the limit of the Company’s obligation. All and any further liability is excluded for any loss or damage arising from the use of any Seed supplied and for any consequential loss or damage arising out of such use or any failure in the performance or any defect in any Seed supplied and for any other loss or damage including, without prejudice to the totality hereof, any failure total or partial of the resultant crop. Such failure can depend on so many natural and other factors beyond the condition of the Seed of the Company’s control, save for at the Company’s option liability for any such replacement or refund as aforesaid. In accordance with the established custom of the Seed trade, any express or implied conditions, statement or warranty, statutory or otherwise, not recorded in writing as a part of these conditions of sale is also excluded. The price of any Seed sold or offered for sale is based upon the limitations of the Company’s liability set out in these terms. The price of such seeds would be much greater if a more extensive liability were required to be undertaken. In accepting the seed on these conditions, the Buyer acknowledges that the limitations of the Company’s liability are fair and reasonable.

Clause 5. Plant Varieties and Seeds Act 1964 (with amendments)

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 Buyer 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 Seeds 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 seeds, is given for general guidance only, as variation in growing environment and management practices can render such information inaccurate. Buyers 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. Buyers should satisfy themselves that any Seed which they order are of a variety performance satisfactory for their requirements and order such seeds at their own risk. Buyers 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 Buyers 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.

Clause 6. 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.

Clause 7. Genetically Modified Organisms

Seeds 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.

Clause 8. 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 Buyer to establish any defect in the seed supplied.

Clause 9. Seed treatments

Where at the Buyer'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 seeds have 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.

Clause 10. Force Majeure

Neither Buyer or Company shall be responsible for delay in delivery of the Seed or any part thereof occasioned by act of God, action by any government, strike, lockout, combination of workmen, breakdown of machinery, power failure, or fire, provided that the party invoking this clause dispatches written notice to the other party within 7 consecutive days of his knowledge before the beginning of the delivery period, whichever is the later. In case of resale such information shall be passed on without delay. If delivery is delayed by more than 30 consecutive days from the end of the agreed delivery period, the party not invoking this clause shall have the option of cancelling the delayed portion of the contract, if the Seeds are not already in course of transit, by giving the other party written notice to that effect, but shall not be entitled to any compensation. A further extension of delivery of 30 days may be mutually agreed if requested by the party invoking force majeure. If delivery under this clause be prevented during this extension, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delay or non-fulfilment under this clause, provided that the party invoking this clause shall have supplied to the other, if required, satisfactory evidence justifying the delay or non-fulfilment.

Clause 11. Property in Seed and Risk

11.1 Risk of damage to or loss of the Seed shall pass to the Buyer:

11.1.1 in the case of Seed to be collected by the Seller or delivered at the Seller's premises, at the time when the Buyer collects or the Seller notifies the Buyer that the Seed is available for collection; or

11.1.2 in the case of Seed to be delivered otherwise than at the Seller's premises, at the time of collection or delivery or, if the Buyer wrongfully fails to collect or take delivery of the Seed, the time when the Seller has advised the Goods are ready for collection or tendered delivery of the Seed.

11.2 Notwithstanding collection or delivery and the passing of risk in the Seed, or any other provision of these Terms, the property in the Seed shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Seed and all other Seed agreed to be sold by the Seller to the Buyer for which payment is then due.

11.3 Until such time as the property in the Seed passes to the Buyer, the Buyer shall hold the Seed as the Seller's fiduciary agent and bailee, and shall keep the Seed separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Seed in the ordinary course of its business or otherwise clean and or treat the Seed in accordance with trade practice

11.4 Until such time as the property in the Seed passes to the Buyer (and provided the Seed are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Seeds to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Seed are stored and repossess the Seed.

11.5 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Seed which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

Clause 12. Insolvency

If the Buyer has a Receiver or Administrative Receiver appointed over any part of its property or business undertaking, or proposes a composition or scheme of arrangement with its creditors, or enters into Liquidation or is adjudicated bankrupt then notwithstanding any previous arrangement with the Buyer for deferred payments the full or full remaining price for seed delivered to the Buyer shall become immediately due to the Company. The Company shall have the right upon such act of insolvency to cancel and/or suspend or to refuse to accept further deliveries and/or to terminate the supply at any time after becoming aware of the above circumstances. Where seed supplied has been received by the buyer but not paid for, then the Company shall have the right to enter any premises where the seed is stored or reasonably believed to be stored and to repossess that quantity which remains unpaid.

Clause 13. Arbitration

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

a) 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), and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.

b) Where a dispute as to quality arises regarding Seeds 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 Buyer 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.

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 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.

Clause 14. Time limits for arbitration

Arbitration proceedings must be commenced as regards claims relating to quantity or quality within 28 days from the date of delivery of the Seeds at the premises of the Buyer or at the premises specified by the Buyer 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.

Clause 15. 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 Seeds at the premises of the Buyer or at the premises specified by the Buyer. If Seeds 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 Seeds, 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.

Clause 16. Payment

- 16.1 Payment terms are strictly 28 days from date of delivery.
- 16.2 No contras are accepted for stock seed against seed contracts.

Clause 17. Non-payment

The Company reserves the right to withhold deliveries under this contract until all and any subsequent payments under this or any other contract with the Buyer have been received.

Clause 18. Acceptance of terms

The giving or sending of an order constitutes an acceptance of these terms by the Buyer who, if he does not accept these terms, must notify the Seller immediately.

Clause 19.

19.1 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.

19.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

19.3 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.

19.4 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

19.5 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 Buyer 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.

19.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer 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 Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

Ebbage Seeds Limited 2013

