

## **Bayer CropScience Limited**

### **Terms for the Sale of Seed**

#### **1 Introduction**

- 1.1 The Seller is Bayer CropScience Limited, a company incorporated in England and Wales under company number 00218826, whose registered office is at 230 Cambridge Science Park, Milton Road, Cambridge, CB4 0WB.
- 1.2 For the purposes of these Terms, but subject to clause 2.2 below, the seed, quantity, packaging, price, delivery point and period, and payment terms will be as entered by the Seller's agent on the Seller's internet-based seed ordering portal (the "**Portal**").
- 1.3 In these Terms, the word "**writing**" includes by e-mail or by entry on the Portal.

#### **2 The Contract**

- 2.1 The seed is supplied by the Seller only on these Terms to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. All other terms and conditions are hereby expressly excluded.
- 2.2 The Buyer authorises the Seller's agent to place the Buyer's provisional and final orders for the seed using the Portal, provided that such agent does so in accordance with the Buyer's instructions. The Buyer warrants that the information it gives to such agent is complete and accurate in all material respects.
- 2.3 The Buyer's provisional order will be treated as an expression of interest by the Buyer in purchasing the seeds ordered, but will not be binding on either party. If the Buyer wishes to actually purchase seed, it must instruct the Seller's agent to enter a final order on the Portal. The entry of a final order does not constitute any commitment on the part of the Seller to sell that, or any, seed or volume of seed to the Buyer, but the Seller will be entitled to deliver seed in accordance with the final order to the Buyer. Either the Buyer or the Seller may cancel (but not vary) the final order at any time prior to delivery by either the Seller's agent notifying the Buyer of the cancellation in writing or the Seller's agent entering the Buyer's cancellation on the Portal.

2.4 The contract between the Buyer and the Seller for the sale and purchase of the seed (the “**Contract**”) will only be made when the Seller or its agent delivers the seed to the Buyer. Each delivery or consignment will be a separate Contract

2.5 The Buyer is not entitled to cancel a final order once the Contract has been formed in accordance with clause 2.4 above.

### **3 VAT**

3.1 Unless otherwise stated the price is exclusive of VAT or any other applicable form of sales or other tax levy, which will be chargeable in addition upon the supply of the seed at the rate ruling at the date of invoice.

### **4 Delivery & Invoicing**

4.1 Any time of delivery set out in the final order is a time requested by the Buyer only and will not be binding on the Seller. The Seller is entitled to deliver the final order at any time unless the Seller’s agent, on the Buyer’s instructions, cancels the final order on the Portal prior to delivery. The Seller will have no liability for failing to deliver at the time requested in the final order or at any other time.

4.2 In the event that a representative of the Buyer is present at the delivery of the seed, he will be asked to provide a signed receipt for the seed delivered. In the absence of a signed receipt, the fact of delivery will be as recorded in the Seller’s (or its agent’s) delivery note left with the seed on delivery and as recorded by the Seller’s agent on the Portal.

4.3 The Seller’s agent may invoice, and receive payment from, the Buyer on behalf of the Seller.

### **5 Genetic modification**

5.1 The seeds will be of varieties bred from parent plants which have not been genetically modified (“**GM**”).

5.2 All reasonable steps have been taken to prevent the adventitious presence of GM material during breeding, production and handling of the seeds (including complying with any separation distances as may be recommended from time to time by relevant UK and/or EU bodies) and appropriate batch samples have been tested to ensure

compliance with the applicable UK and/or EU seed legislation. The seeds have been field-grown. However, nothing in the Contract will be interpreted as a condition or warranty that the seeds are free from GM impurities, and the Seller will not be liable to the Buyer if they are not free from GM impurities.

## **6 Retention of title**

6.1 Until paid for in full, title in the seed remains the Seller's.

6.2 Subject to clause 6.3, until the title in the seed passes to the Buyer:

6.2.1 the Buyer will hold all the seeds as bailee for the Seller and as the Seller's fiduciary agent;

6.2.2 will not grant a charge over, resell, transfer or otherwise lose possession or control of any of the seed;

6.2.3 will store all the seed separately from property of third parties and of the Buyer at no cost to the Seller in such a way that it is easily identifiable as the property of the Seller;

6.2.4 maintain the seed in secure and satisfactory condition and in accordance with any storage instructions of the Seller;

6.2.5 keep the seed insured against all risks for its full price from date of delivery;

6.2.6 inform the Seller immediately where any of the events set out in sub-clauses 23.1 and 23.2 affects or is likely to affect the Buyer; and

6.2.7 without prejudice to any other rights, the Seller may recover and resell any or all of the seed upon demand and the Buyer undertakes to give access to its premises and the seed to enable the Seller to retake possession of the seed.

6.3 The Buyer is entitled to plant the seed in the usual course of business in accordance with clause 10 below.

**7**     **Warranty**

7.1     The Seller warrants that the seed supplied will be of the species and type specified in the Buyer's order and accepts, subject to clause 8, liability for any loss or damage resulting from any breach of this warranty.

**8**     **Liability**

8.1     Nothing in the Contract will limit or exclude the Seller's liability for:

8.1.1     death or personal injury caused by its negligence;

8.1.2     fraud or fraudulent misrepresentation;

8.1.3     breach of the implied term that the Seller has the right to sell the seed and that, subject to clause 6, good title in the seed will pass to the Buyer; or

8.1.4     any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

8.2     Subject to clause 8.1 above, in the event of any seeds sold not complying with the express terms of this Contract, or any of the correct species and type proving defective in varietal purity, the Seller will at his option replace the defective seeds free of charge to the Buyer or will refund all payments made by the Buyer in respect of the defective seeds and this will be the limit of the Seller's obligation.

8.3     Subject to sub-clauses 8.1 and 8.2 above, the Seller will under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

8.3.1     any loss of profit, business, use or goodwill, or any pure economic loss or any indirect or consequential loss arising under or in connection with the Contract; or

8.3.2     any loss or damage resulting from total or partial failure of the resultant crop since such failure can depend on many natural and other factors beyond the Seller's control.

8.4 In accordance with the established custom of the seed trade, any express or implied conditions, statement or warranty, statutory or otherwise, not stated in these conditions are also excluded from the Contract. The price of any seeds sold or offered for sale is based upon the foregoing limitations upon the Seller's liability. The price of such seeds would be much greater if a more extensive liability were required to be undertaken. In accepting the seed upon these conditions, the Buyer acknowledges that the limitation of the Seller's liability is fair and reasonable.

## **9 Proprietary rights**

9.1 The sale of the seed by the Seller does not confer any right or licence upon the Buyer to use or exploit in any way intellectual property rights subsisting in or relating to the seed of which the Seller is the proprietor or licensee or to which the Seller is otherwise entitled.

## **10 Use of the seed**

10.1 The seed is intended to be sown in the growing season during which it is delivered. The Seller accepts no liability whatsoever in connection with the use of the seed in any subsequent season or the use of the seed to produce farm saved seed.

10.2 The Buyer (either directly or indirectly, either alone or in conjunction with others) will not use the seed for the purpose of reproduction.

## **11 Buyer's Information**

11.1 The Seller will use the Buyer's information to fulfil the order. The Seller may use agents and service providers for these purposes. To enable the Seller and other companies in its group to make credit decisions about the Buyer, the Seller may search the files of credit reference agencies (who will record the search).

11.2 The Seller and other members of its group may also contact the Buyer from time to time with further information (by email, post and telephone) about the Seed, related products and other products and services of the Seller's group that may be of interest to the Buyer.

## **12 Standards**

- 12.1 Seed sold which is the subject of this Contract is guaranteed to comply at the time of delivery with the UK Seeds Regulations currently in force. All information whether contained in the Seller's catalogue or given by his staff relation 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 local or climatic conditions 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 such seeds which they order are of a variety and/or mixture and performance satisfactory for their requirements and order such seeds at their own risk.
- 12.2 Unless otherwise agreed between the parties, any advice given by the Seller or its staff or agents to the Buyer will not form part of the Contract. Buyers are advised that the Sellers' staff or agents have no authority to give more than general guidance as described above and the Seller disclaims liability for any advice given or opinion expressed by them. Such advice is followed, or such opinion acted upon, entirely at the Buyer's own risk.

## **13 Availability**

- 13.1 Seeds are growing organisms and their growth is subject to pests, disease and climatic conditions. All sales of UK grown seeds are therefore subject to harvest and the Seller reserves the right in the event of market shortages to apportion such supplies as become available among his customers at his sole discretion.
- 13.2 Where seeds sold are imported, their sale is subject to supplies being made available to the Seller by his normal supplier with whom the contract for their supply has been placed. In the event of failure of such supplies from abroad, and the seeds not being replaceable from other sources at a price no greater than that charged in the Contract, this sale agreement will be deemed to be cancelled without any liability to either party providing notice of such failure is given to the Buyer at the earliest opportunity.

## **14 Claims**

14.1 Claims based upon those defects of quantity, quality or condition which should be apparent upon reasonable examination by the Buyer will be advised immediately and confirmed by fax, e-mail or other electronic means or by letter sent by first class post, within two business days of arrival of the seeds at their ultimate destination within the UK. In the event of a claim by the Buyer, the Seller reserves the right to inspect the seeds prior to any further action being taken.

## **15 Latent Defect**

15.1 Disease of plants can be transmitted by the wind, insects, animals or human agencies and may also be seed borne or soil borne. The Seller believes the seed hereby sold to be free from latent defect, but it is not a condition of sale nor does the Seller warrant that any seed sold will be free from such defect and will not be responsible in any way for the resultant crop since any failure can depend on many factors outside the Seller's control.

## **16 Complaints**

16.1 No complaint under the terms of this Contract can be considered unless clear 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 suitable prepared ground, treated carefully and correctly throughout and subject only to such conditions as were likely to produce a favourable crop.

## **17 Plant Varieties & Seeds Act 1964 & Plant Varieties Act 1997**

17.1 The price of any variety which becomes the subject of a grant of plant breeders' rights under the Plant Varieties & Seeds Act 1964, as amended and/or the Plant Varieties Act 1997, 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 breeders' rights, there is any change in the rate of royalty payable to the owner of the rights, the price will be adjusted accordingly.

## **18 Farm Saved Seed**

18.1 The Buyer will ensure they comply promptly and fully with all legal obligations in relation to Farm Saved Seed, including the obligation to provide all relevant information upon request by or on behalf of the holder of relevant plant breeders' rights. These legal obligations are set out in various places, including Council Regulation (EC) No.2100/94; Commission Regulation (EC) No.1768/95; the UK Plant Varieties Act 1997 and the regulation and implementing rules granted under the Act, together with any subsequent amendments relating to all of the aforementioned.

## **19 Seed Treatment**

19.1 Where at the Buyers request any treatment whether chemical or otherwise is applied to the seed, the Sellers' liability will be limited to such treatment being carried out in the correct manner and/or in accordance with the instructions given by the manufacturer of the chemical in question. The Seller accepts no responsibility whatsoever for the effectiveness of such treatment or any damage direct or consequential which may result therefrom.

19.2 Where the seeds have been treated with a liquid or 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.

## **20 Return of Seed**

20.1 The return of seed purchased under this Contract for credit, where such seeds are found to be surplus to the requirements of the Buyer, is at the complete discretion of the Seller and the Seller's prior agreement must be sought. Where an agreement for the return of seed is obtained a handling charge may be applied which will be made known to the Buyer at the time agreement is given.

## **21 Risk**

21.1 Risk passes to the Buyer on delivery of the seeds.

## **22 Default**

22.1 In the event of default of fulfilment of the Contract by either party, the other at his discretion will, after giving notice by fax, letter or e-mail, have the right to sell or



purchase, as the case may be, against the defaulter and the defaulter will make good any loss, if reasonable, on such purchase or sale on demand.

22.2 In the event of default by either party entitling the other party to damages, subject to clause 8, such damages will be based upon the actual or estimated value of the seeds on the date of default.

## **23 Insolvency**

23.1 If either party to this Contract (“the affected party”):

23.1.1 has a receiver, administrative receiver, or administrator appointed of any of its property or business undertaking;

23.1.2 announces that it has ceased or will or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing Contracts);

23.1.3 suspends payment of its debts or fails to pay, is unable to pay or admits or states its inability to pay, its debts as they fall due;

23.1.4 disposes or threatens to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party); or

23.1.5 convenes, calls or holds a meeting of its creditors or makes any arrangement, voluntary arrangement or composition with its creditors;

23.2 or:

23.2.1 the directors of either party make or state an intention to make or give notice of a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986;

23.2.2 a Petition is presented for winding-up or administration of either party;

23.2.3 a resolution (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice has been

given to the other party who has approved it) is passed for the voluntary winding-up of either party;

- 23.2.4 either party is dissolved;
- 23.2.5 a Statutory Demand in Bankruptcy is served on either party;
- 23.2.6 an Interim Order under Part VIII or the Insolvency Act 1986 is applied for or made in respect of either party;
- 23.2.7 a Bankruptcy Petition is presented against either party;
- 23.2.8 either party suffers the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises; or
- 23.2.9 a party being a partnership any of the above events occurs with respect to the partnership or to any partner therein;

then notwithstanding any previous arrangement with the other party for deferred payments:

- 23.2.10 the full or full remaining price for any seeds delivered by the other party (“the innocent party”) will become immediately due and payable to the innocent party; and
- 23.2.11 the innocent party will have the right upon giving written notice to the affected party without prejudice to any other rights and remedies available to the innocent party forthwith to cancel and/or suspend or to refuse to accept any further deliveries and/or to terminate the Contract at any time after becoming aware of any of the above circumstances or events.

23.3 Where either party relies upon any of the circumstances/events listed above (“an act of Insolvency”) that party will forthwith serve a notice of such an act of Insolvency in accordance with the Notices clause of this Contract to the other party. Where proof is available that such notice was served within two business days of the occurrence of the act of Insolvency, the Contract will be closed out at the market price ruling on the business day following the serving of that notice. In all other circumstances the innocent party, upon learning of the occurrence of the act of Insolvency, will have the

option of closing the Contract at either the market price ruling on the first business day following it becoming aware of the act of Insolvency or at the market price ruling on the first business day after the date when the act of Insolvency occurred.

- 23.4 Where the Contract has been so terminated, and where the property in the seed or grain has not passed, and payment for it has not been received by the innocent party then that party will have the right to enter any land or premises where the grain or seed delivered under this Contract but in which property has not passed and payment has not been received is stored or where it is reasonably believed to be stored and may repossess the same.

## **24 Force Majeure**

- 24.1 Neither the Buyer nor the Seller will be responsible for any delay in delivery of the seeds or any part thereof occasioned by any Act of God, action by any Government, strike, lockout, combination of workmen, riot or civil commotion, breakdown of machinery, power failure, fire, failure of crop, fuel shortage, loss and/or detention at sea or any other contingency beyond their control, provided that the party invoking this clause despatches written notice to the other party within five business days of their knowledge of the occurrence, or not later than five business days before the beginning of the delivery period, whichever is the later. In case of resale, such information will be passed on without delay.
- 24.2 If delivery is delayed by more than 30 consecutive days from the end of the delivery period, the party not invoking this clause will have the option of cancelling the delayed portion of the Contract, if not already in course of transit, by giving to the other party written notice to that effect, but will 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 will be cancelled.
- 24.3 Neither party will have a claim against the other for delay or non-fulfilment under this clause 24, provided that the party invoking this clause will have supplied to the other, if required, satisfactory evidence justifying the delay or non-fulfilment.

**25 Non-Payment**

25.1 The Seller reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this or any other contract with him by the Buyer have been received and reserves a lien upon – and the right to sell or otherwise dispose of – all seed the subject of this Contract, whether appropriated to it or not, in respect of any such payments.

**26 Business Day/Non-Business Days**

26.1 A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day. Saturdays, Sundays and officially recognized national holidays applicable throughout England and Wales will be deemed non-business days for the purpose of passing of notices and claims.

**27 Contracts (Rights of Third Parties) Act 1999**

27.1 Pursuant to s1(2)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the Contract may be enforced by a third party.

**28 Governing Law and Jurisdiction**

28.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).