

# MOLES



# SEEDS

## Conditions of Sale

### 1. GENERAL

- 1.1 Every order is accepted subject to these conditions which shall apply in conjunction with the terms of business contained in our catalogue.
- 1.2 Nothing in our catalogue shall constitute an offer to sell.
- 1.3 The sending or giving to us of an order constitutes an offer which we may accept or decline to accept.
- 1.4 The sending or giving to us of an order shall constitute agreement to and acceptance of all terms of business including (but not limited to) these conditions, and the buyer if not prepared to accept such terms and conditions must return the goods to us forthwith (and in any case within 48 hours).
- 1.5 No order which seller has accepted may be cancelled by buyer except with the written agreement of seller and on the terms that buyer shall indemnify seller in full against all losses (including loss of profit) costs damages charges and expenses incurred by seller as a result of such conditions.

### 2. TITLE AND RISK

- 2.1 Until payment in full has been made to us all goods supplied by us remain our property which shall be kept on the buyer's premises separately from the buyer's own goods or those of any other person and in such manner as shall render them readily identifiable as our goods and they shall be properly stored protected and insured until such time as the property in the goods passes to the buyer.
- 2.2 Until payment in full has been made the buyer shall hold the goods as bailee of and in trust for us as legal and beneficial owners of the goods and the buyer shall at all times take proper care of the goods.
- 2.3 The risk in the goods shall pass to the buyer at the time of delivery of the goods to the buyer or the buyer's agent.
- 2.4 Until such time as the property in the goods shall pass to the buyer we shall be at liberty at any time to require the buyer to deliver up the goods to us and if the buyer fails to do so forthwith (and in any case within 48 hours) we shall be entitled to enter upon any premises where the goods are stored and repossess the goods and the buyer hereby grants us an irrevocable licence to do so which shall continue in force notwithstanding the termination of the contract for any reason.

### 3. FORCE MAJEURE

- 3.1 We shall not be responsible for any delay in delivery or for non-delivery of any goods or any part of them caused by any act of God action by any government or any department of central government or any local government or any strike lockout industrial action riot civil commotion breakdown of machinery or vehicle power failure inclement weather fire failure of crop loss at sea detention at sea or port or any other event or contingency beyond our control.
- 3.2 If any of the goods shall be rendered unfit for delivery by reason of any of the above-mentioned acts events or contingencies the contract shall so far as it relates to those goods be deemed to be discharged without liability on our part.

### 4. PRICE

- 4.1 All goods are sold at prices current at the date of contract notwithstanding anything in our catalogue.
- 4.2 Value added tax at the rate or rates for the time being in force in respect of the goods shall be payable by the buyer in addition to the price.
- 4.3 We shall be entitled to adjust the price of the goods whether before or after the making of the contract in the event of any variation in the cost to us of supplying the goods or any part thereof by reason of (a) any increase in the cost of the goods required by us for the completion of the contract; (b) any increase in any royalty payable under the Plant Varieties and Seeds Act 1964 or any statutory modification or re-enactment thereof for the time being in force (c) any other matter beyond our control including (but not limited to) fluctuations in

exchange rates between monetary currencies or the action of any government or other authority anywhere in the world or any labour problems.

- 4.4 All prices are subject to alteration without notice.

### 5. COMPLAINTS

- 5.1 No complaint under the terms of these conditions can or will be considered unless clear proof can be and is given that seed sown and alleged to have performed unsatisfactorily was in fact the seed supplied by us and that it was sown on ground suitably prepared and was treated carefully and correctly throughout and subject only to such conditions as were likely to produce a favourable crop.
- 5.2 All seeds are offered and sold for production of consumer crops and not for reproduction of seed.
- 5.3 No responsibility whatsoever will be accepted by us for any seed crops produced.

### 6. TERMS OF PAYMENT

- 6.1 Goods are invoiced net and accounts will be regarded as overdue if unpaid after 30 days from date of invoice.
- 6.2 Interest will be charged at the rate of 2% per month on accounts still unpaid after 60 days from date of invoice (as well after as before any judgment).
- 6.3 We reserve the right to withhold deliveries under the contract until all outstanding payments under any contract have been received by us.
- 6.4 If any cheque is returned by the bank after presentation or re-presentation of it for payment any bank charges incurred by us together with a handling charge shall be reimbursed to us by the buyer.
- 6.5 Any card chargebacks that are instigated by the card holder without giving us due opportunity to resolve any matter relating to the order/chargeback may be deemed unreasonable and the chargeback left as a debt owing by the customer.

### 7. INSOLVENCY

- 7.1 If the buyer (a) has a receiver or liquidator or administrator appointed in respect of any property or business undertaking (b) announces that the buyer has ceased or is ceasing to trade (c) fails to make any payment when due or suspends payment (d) notifies any creditor that the buyer is unable to meet debts or that he is about to suspend payment of any debts (e) calls or holds a meeting of creditors (f) commits an act of bankruptcy or is adjudicated bankrupt or has an administration order made (g) being a limited company enters into liquidation (other than for the purpose of re-construction or amalgamation) (h) enters into any arrangement or composition with or for the benefit of creditors or (i) suffers any distress or execution to be levied upon the buyer's goods then notwithstanding any previous arrangement for deferred payments all sums payable by the buyer to us shall immediately become due and we shall have the right (without prejudice to any other right or remedy available to us) to cancel or suspend further deliveries under the contract.
- 7.2 On the exercise of any rights or remedies we shall not be liable to pay any compensation to the buyer.

### 8. DAMAGE, DELAY OR LOSS IN TRANSIT

- 8.1 We are to be notified immediately of any damage or delay or loss in transit.
- 8.2 On receipt of goods the buyer is to inspect them carefully and if there is any sign of damage he is to sign for the goods as "damaged in transit" and to indicate that a claim will be made.
- 8.3 The buyer must notify us immediately by telephone or e-mail and immediately confirm such notification by first-class post or e-mail of any goods received damaged.
- 8.4 All liability is excluded for any loss resulting from the need to provide additional documentation at the point of import into a customer's country, trade territory or any other administrative zone. Furthermore, all liability is excluded for any

import duties, taxation or any other charges levied upon the customer at the point of import. We will endeavour to comply with all import/export requirements wherever possible but does not accept any liability relating to such requirements; customers are strongly advised to seek out guidance on such matters from the relevant authority before placing an order. No liability is accepted for any loss or damage resulting from the goods being destroyed by the authorities at the point of entry.

#### **9. AVAILABILITY**

- 9.1 Orders are only accepted subject to availability of goods.
- 9.2 If a particular variety is not available we may substitute what in our opinion is the most suitable alternative.
- 9.3 The buyer shall be deemed to have accepted the substitute unless the goods are returned in good condition to us within ten days of the receipt of them in which case we will credit their value to the buyer's account.
- 9.4 If no suitable substitute is available any relevant contract will be deemed to be cancelled without any liability on either party's part and in that case if payment for the goods has already been made we will credit the value of them to the buyer's account.

#### **10. LIABILITY**

- 10.1 We warrant that the seed supplied shall be of the species and type specified in the contract. Should a quantifiable breach of this warranty occur we will either replace the defective seeds free of charge to the buyer or refund all payments made by the buyer in respect of the breach and this shall be the limit and extent of our obligation. Any such cases will be considered on an individual basis.
- 10.2 Subject to the provisions of sub-clause 1 of this clause if any seeds sold shall not comply with the express terms of the contract of sale or if any seed of the correct species and type shall prove defective in varietal purity we will either replace the defective seeds free of charge to the buyer or refund all payments made by the buyer in respect of the defective seeds and this shall be the limit and extent of our obligation. Any such cases will be considered on an individual basis.
- 10.3 All liability is excluded for any loss or damage arising from the use of any seed supplied and for any consequential loss or damage arising from the failure in the performance of or from any disease or any defect in any seeds supplied and for any other loss or damage including (without prejudice however to the generality of the foregoing) any failure whether total or partial of the resultant crop. Any such cases will be considered on an individual basis.
- 10.4 Any express or implied conditions, statements, representations or warranties statutory or otherwise not stated in these conditions are hereby excluded.
- 10.5 Our liability under the warranty hereinbefore contained shall automatically cease and determine if the buyer shall not have paid by the due date for all goods supplied by us (whether under this or any other contract between the buyer and us)
- 10.6 If specially treated or tested seed is contracted to be sold we accept no liability beyond undertaking that the treatment or test has been carried out and (at our option) to refund the price or to replace the seed if the treatment or test has not been carried out.
- 10.7 The price of seeds sold or offered for sale by us is based upon the foregoing limitation upon our liability.
- 10.8 In accepting the goods upon these conditions the buyer acknowledges that the limitation of our liability is fair and reasonable and undertakes to insure against all risks hereby excluded.
- 10.9 All information given in our catalogue or otherwise provided by us or by any agent employee or representative on our behalf relating to varieties varietal characteristics or periods of maturity or otherwise relating to the performance of seeds and seed count is given for general guidance (and for general guidance only) to our customers and does not constitute a warranty or representation on our part as to such matters or any of them and must not be relied upon as such but must be seen only as general guidance, for which no responsibility is accepted and which the buyer if he acts thereon must do so entirely at his own risk.

#### **11. ARBITRATION**

We shall be at liberty to require any dispute arising out of the contract or any question relating thereto to be referred to arbitration under the provisions of the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force.

#### **12. LAW AND INTERPRETATION**

- 12.1 These conditions and every contract made pursuant thereto shall be governed by and construed in accordance with English law.
- 12.2 The headings of these conditions is for convenience only and shall not affect the construction of the conditions.
- 12.3 If any of the provisions of these conditions shall at any time be held to be unenforceable unlawful or invalid in any respect the validity and enforceability of the remaining provisions hereof shall not be affected or impaired by any unenforceable unlawful or invalid provision.