

Terms and Conditions of Sale and Delivery of EUROPLANT Pflanzenzucht GmbH

1. General

The following general Terms and Conditions of Sale and Delivery shall apply to all offers, deliveries and services and all associated legal transactions of EUROPLANT Pflanzenzucht GmbH (the "Seller") with companies according to section 14 German Civil Code (*Bürgerliches Gesetzbuch – BGB*), legal entities incorporated under public law (*Personen des öffentlichen Rechts*) and special funds under public law (*öffentlich-rechtliche Sondervermögen*) (the "Buyer"). They apply for the entire duration of the business relationship.

2. Complementary applicability of RUCIP and Berlin Agreements

2.1 Unless otherwise specified herein below or in the contract, the German Rules and Practices for Trade in Potatoes / Berlin Agreements (*Deutsche Kartoffelgeschäftsbedingungen/ Berliner Vereinbarungen*) including their Rules for Assessment and Arbitration, as applicable at the time of the signing of the contract, shall apply to contracts on deliveries of table potatoes/ early potatoes and seed potatoes delivered within Germany.

2.2 Unless otherwise specified herein below or in the contract, the Rules and Practices for Inter-European Trade in Potatoes (RUCIP) including the Rules for Expert Assessment and Arbitration as applicable at the time of the signing of the contract shall apply to the import/export of table potatoes/ early potatoes and seed potatoes.

2.3 Upon the Buyer's request, the Seller shall provide to the Buyer the German Rules and Practices for Trade in Potatoes / Berlin Agreements and/or the Rules and Practices for Inter-European Trade in Potatoes, including the Rules for Expert Assessment and Arbitration.

2.4 In the event of regulations deviating from or contradicting one another, primarily what has been agreed individually between the parties shall apply (cf. section 3.3) and then the contracts stated above in sections 2.1 and 2.2 in the following order: (1) contract, (2) Terms and Conditions of Sale and Delivery of EUROPLANT Pflanzenzucht GmbH and, as a supplement (3) the Berlin Agreements and/or the Rules and Practices for Inter-European Trade in Potatoes (RUCIP).

3. Exclusive application, letter of confirmation, written form

3.1 The present Terms and Conditions of Sale and Delivery shall apply exclusively. The Seller does not accept any differing, contradicting or supplementary general terms and conditions of the Buyer. They shall only become an integral part of the contract to the extent that the Seller has expressly approved their validity. This requirement of approval shall apply at all times, including, for example, in the event that the Seller, while being aware of the Buyer's general terms and conditions, conducts a delivery without reservations.

3.2 The content of any letter of confirmation is considered to be agreed upon unless the recipient objects in writing immediately. This, however, shall not apply to the acceptance of general terms and conditions of the Buyer submitted with any such letter.

3.3 Individual agreements made with the Buyer in the individual case (including side-agreements or addenda and amendments of agreements or general terms and conditions) shall prevail over these Terms and Conditions of Sale and Delivery. Subject to counterproof, a written contract or our written confirmation shall be decisive for the contents of such agreements.

3.4 Notifications and declarations by the Buyer which are relevant in law with regard to the contract (e.g. setting of periods, notification of defects, rescission or price reduction) shall be made in writing. For the purposes of these Terms and Conditions of Sale and Delivery, written form shall mean the

submission of a notification or declaration by letter, e-mail or fax). Statutory directives of form and other verification, in particular in cases of doubt about the declarant's legitimacy, shall remain unaffected.

3.5 References to the application of statutory provisions shall have a clarifying meaning only. Even without such a clarification, the statutory provisions shall therefore apply to the extent that they have not been directly amended or expressly ruled out in these Terms and Conditions of Sale and Delivery.

4. Conclusion of contracts, place of performance

4.1 Seller's quotations shall be subject to change without notice and non-binding.

4.2 Contracts shall only be concluded upon written confirmation of acceptance by the Seller (e.g. by order confirmation) or upon delivery of the goods specified in the contract to the Buyer.

4.3 The place of performance for payments shall be the Seller's registered office. Agents or representatives of the Seller are not authorized to collect invoice amounts unless this is provided for in an explicit written agreement.

5. Payment, set-off, default

5.1 Unless otherwise agreed upon in writing, the price agreed for the goods shall be due for payment without deductions immediately after receipt of the goods. Deferred terms and sales on credit are possible only if agreed upon in writing by both contract parties prior to the issue of the goods.

5.2 The regulations of sections 195 et seqq., German Civil Code (BGB), shall apply to limitation of the Seller's claims resulting from the delivery of potatoes or seed potatoes to the Buyer.

5.3 The Seller shall be obliged to accept bills of exchange only if there is an explicit written agreement to this effect.

5.4 Set-off by the Buyer against claims of the Seller is permitted only in case of uncontested counterclaims or counterclaims which are ready for a decision or have been determined with legally binding effect as well as in case of warranty claims for defects arising from the respective contractual relationship. The Buyer shall not be entitled to exercise any right of retention unless the respective claim arises from the same contractual relationship or is based on an uncontested counterclaim or on a counterclaim which is ready for a decision or has been determined with legally binding effect. Each individual order to deliver is considered a separate contractual relationship.

5.5 The Buyer falls into arrears at the expiry of the payment period. The Seller has the right to charge interest on maturity according to sections 352, 353 German Commercial Code (*Handelsgesetzbuch – HGB*). If the Buyer is in arrears with the payment of its obligations, the Seller is entitled to charge interest in the amount of 8 percentage points above the applicable base interest rate per annum. The Seller is entitled to demand higher interest on other legal grounds or claim further compensation.

5.6 If the Buyer falls into arrears in payment and allows a suitable grace period set by the Seller to expire fruitlessly (or if such setting of a grace period is dispensable according to the applicable statutory provisions), the Seller shall be entitled to demand return of the goods; such taking back the goods shall simultaneously constitute a withdrawal from the contract. This shall apply accordingly in case of any other conduct which constitutes a breach of contract.

5.7 The Seller shall also be entitled to withdraw from the contract without notice to the extent that the Buyer is unable to pay, or insolvency proceedings have been opened. The Buyer's

claims to damages are excluded, insofar as they are not admissible according to the provisions in sections 7.4 - 7.6. 5.8 In all other regards, the legal rights of the Seller shall remain unaffected in the event of default of the Buyer.

6. Reservation of self-delivery and harvest, partial deliveries

6.1 The Seller's delivery shall be subject to timely, correct, and proper delivery to the Seller by its suppliers. To the extent that the Seller is not at fault for the non-delivery, it shall be released from its duty to perform. It shall inform the Buyer without delay about the non-availability and reimburse considerations already made without delay.

6.2 Contract Subject to Crop: If the harvest situation in a harvest year leads to the Seller having less goods of the ordered variety or of the ordered quality for delivery at its disposal than could justifiably be expected at the conclusion of the contract, the Seller - insofar as it is, apart from that, not at fault for the non-delivery - shall be entitled to supply all purchasers of goods of the ordered variety or ordered quality pro rata only in the ratio of the existing quantities to the orders in question. With the delivery of the quantity so reduced, the Seller completely fulfils its delivery obligation towards the Buyer and shall not be obliged to deliver substitute products. It shall not be liable towards the Buyer for damages incurred because of the short delivery. The same shall apply in case of a total loss of the harvest. The Buyer for its part shall merely be obliged to pay the quantities which are actually supplied. This provision shall apply accordingly in the event that less or no goods are available or may be delivered as a result of a ban on placing on the market or a comparable order issued by the competent authorities. In the event of non-availability of goods in accordance with this section 6.2, the Seller shall inform the Buyer of the non-availability of the goods without delay and refund any consideration already paid in this respect.

6.3 Aside from the provisions in sections 6.1 and 6.2, the Seller shall also be entitled to make partial deliveries unless this is deemed unreasonable for the Buyer in the individual case. In case (i) the partial delivery can be used by the Buyer for the contractually agreed purpose, (ii) delivery of the remaining goods ordered is ensured and (iii) the Buyer does not incur any significant additional expenses or costs, or the Seller agrees to bear any such additional costs incurred, such partial deliveries shall not be deemed unreasonable.

7. Warranty for defects, compensation

7.1 The agreed quality (*vereinbarte Beschaffenheit*) within the meaning of section 434 German Civil Code shall be exclusively the quality which was agreed in writing in the contract. Public statements, promotions or advertisements by the Seller or its agents shall not constitute an agreement with regard to the quality of the goods (*Beschaffenheitsvereinbarung*) within the meaning of section 434 subsection 2 or 3 German Civil Code, if not explicitly confirmed in the contract. The Seller is also not liable for public statements made by third parties concerning the quality of the goods, in particular, in advertising or labelling.

7.2 The Buyer shall not be entitled to assert any claims for defects unless it has duly complied with its obligations pursuant to sections 377, 381 German Commercial Code and, in particular, the obligations to inspect and give notice of defects pursuant to the German Rules and Practices for Trade in Potatoes (*Kartoffelgeschäftsbedingungen/ Berliner Vereinbarungen*); in the event of deliveries of table potatoes/ early potatoes as well as seed potatoes delivered within Germany; see sec. 2.1 above) and the Rules and Practices for Inter-European Trade in Potatoes (RUCIP; in the event of the import/export of table potatoes/ early potatoes as well as seed potatoes; see sec. 2.2 above), respectively, which shall have priority here. The receipt of the notice of defects by the Seller shall be decisive for the observance of the time limit. The claiming of damages (including damages in lieu of performance) shall be permitted only in accordance with clauses 7.3 - 7.7.

7.3 If notice of defect is given in due time, the Seller shall first be entitled to subsequent performance (*Nacherfüllung*), this being at its choice by remedying of the defect (rectification, *Nachbesserung*) or by delivery of a defect-free object (replacement delivery, *Ersatzlieferung*). The Seller's right to reject the subsequent performance under the statutory

conditions shall remain unaffected. If subsequent performance cannot be effected within a reasonable period, if impossible due to the quality of the goods or dispensable according to statutory provisions, the Buyer may, at its own option, either rescind the contract (*Rücktritt vom Vertrag*) or reduce the purchase price (*Minderung*). However, no right to rescission shall exist in the event of a negligible defect. The provisions of section 478 German Civil Code shall remain unaffected thereby. The Buyer's claims to damages or reimbursement of fruitless expenditures shall be subject to the provisions in sections 7.4 - 7.7 also in the event of defects, and have been ruled out apart from this.

7.4 The Seller shall be obliged to pay damages for any legal grounds whatsoever, in particular due to breach of duty and unlawful acts, only in case of wilful conduct or gross negligence on the part of the Seller, its legal representatives or vicarious agents, unless the respective claims result from culpable injury to life, body or health or a breach of material contractual obligations (*wesentliche Vertragspflichten*). A "material contractual obligation" is an obligation essential to achieving the purpose of the contract in question, on compliance with which the Buyer regularly relies and may rely. The Seller shall also be obliged to pay damages if it has assumed a guarantee for the properties of the goods, has fraudulently concealed the defect or if it is liable under the Product Liability Act.

7.5 Liability for damages in cases of negligent breach of duty and culpable breach of material contractual obligations (cf. section 7.4) shall be limited to the foreseeable and typical damage. The liability for culpable injury to life, body or health and liability under product liability law shall remain unaffected by this limitation. The same applies if the Seller has assumed a guarantee for the properties of the goods or has fraudulently concealed the defect.

7.6 The Buyer can only rescind or terminate the contract on account of a breach of an obligation which does not entail a defect if the Seller is accountable for the breach of the obligation.

7.7. If and to the extent that the Seller's liability is excluded or limited in accordance with section 7 of the Terms and Conditions of Sale and Delivery, such exclusion or limitation shall also apply to the personal liability of the employees, representatives or vicarious agents of the Seller.

7.8 The Buyer's claims for defects and consequential damage resulting from defects shall be subject to a limitation period of one (1) year as of the transfer of risk. This shall also apply to the Buyer's contractual and extra-contractual claims to damages based on a defect in the goods, unless application of the regular statutory limitation (sections 195, 199, German Civil Code) would lead to a shorter limitation in the individual case. All other claims against the Seller shall expire one (1) year after the point in time determined in section 199 subsection 1 German Civil Code, at the latest, however, 5 years after arising of the claim. This applies, in particular, to claims resulting from unlawful acts or unjustified enrichment. The shortening of the limitation period shall not apply in case of liability due to wilful conduct, gross negligence and culpable violation to life, body and health, due to the assumption of a guarantee or fraudulent concealment of a defect or a liability according to the German Product Liability Act (*Produkthaftungsgesetz*).

8. Reservation of title

8.1 All goods delivered by the Seller to the Buyer remain the property of the Seller until all present and future claims resulting from the business relationship with the Buyer have been settled (the "*Reserved Goods*"). The Reserved Goods may not be pledged to third parties or transferred to third parties by way of security before the purchase price has been settled in full.

8.2 Until such right is revoked (cf. section 8.4), the Buyer may further process the Reserved Goods within the framework of the ordinary course of business. The Buyer does not acquire ownership by processing, joining, mixing or commingling (the "*Processing*") of Reserved Goods as it shall be agreed such Processing is done by the Buyer on behalf of the Seller, which shall be deemed the manufacturer. If the Buyer processes, joins, mixes or commingles Reserved Goods with other goods not belonging to the Seller, the Seller shall be entitled to the co-ownership share in the new product in the ratio of the invoice value of the Reserved Goods to the value of the remaining

processed goods as at the time of the Processing. If the Seller acquires (co-)ownership, the parties herewith agree that the Seller shall provide for the Buyer to obtain (co-)ownership in the new product in accordance with clause 8.1. In case (co-)ownership should not be acquired by the Seller but the Buyer acquires, in particular, sole ownership in the new product, the parties agree that the Buyer concedes to the Seller co-ownership in the new product in relation to the value of the Reserved Goods; the parties agree that the Buyer shall store the new product for the Seller free of charge. By way of security, the Buyer shall also assign to the Seller any claims against third parties which may arise from such Processing. The Seller accepts these assignments. Apart from this, the (co-)ownership in the product created by Processing shall be subject to the same provisions as the purchased goods delivered subject to reservation (Reserved Goods).

8.3 Until such right is revoked (cf. section 8.4), the Buyer may sell Reserved Goods within the scope of the regular course of business. All claims of the Buyer resulting from a resale of Reserved Goods shall be assigned to the Seller as at the time of the signing of the contract in order to secure all claims of the Seller resulting from the business relationship all told, or for securing of the Seller's share of co-ownership. The Seller accepts such assignment. The Buyer shall be entitled to collect such claim for the Seller's account until such entitlement is revoked by the Seller. This shall not affect the right of the Seller to collect the claims itself. However, the Seller undertakes not to collect the claims as long as the Buyer duly complies with its payment obligations and other duties or a revocation pursuant to section 8.4 takes place.

8.4 The Seller reserves the right to revoke the right to sell or process Reserved Goods and the authorization to collect claims assigned to the Seller if the Buyer is in arrears with payment, an application for insolvency proceedings against its assets is made or is rejected due to insufficiency of funds or if any other deficiency of its financial capacity occurs. In the event of a revocation, the Seller may demand from the Buyer to communicate the assigned claims and respective debtors, to release all data required for collection, to hand over the associated documents and to inform third-party debtors of the assignment. Upon the Seller's request, the Buyer shall issue notarized documents on the assignment at its own expense. The Seller is further entitled to revoke the Buyer's authorisation to further sell or process the Reserved Goods.

8.5 In case of an request for the opening of insolvency proceedings, a seizure of Reserved Goods or other third-party interventions, the Buyer is obliged to refer to the Seller's ownership and immediately notify the Seller in writing. If the third party is unable to reimburse to the Seller the judicial and extrajudicial costs of a legitimately filed suit according to section 771 German Code of Civil Procedure (Zivilprozessordnung – ZPO), the Buyer is liable to the Seller for the loss.

8.6 The Buyer is obliged to treat Reserved Goods with care and to adequately insure them at its own expense. In this context, claims from insurance contracts shall be assigned to the Seller in advance until all claims resulting from the business relationship have fully been paid. The Buyer shall inform the Seller immediately of any event of damage.

8.7 The Seller shall release, upon the Buyer's demand, any security to which it is entitled to the extent that the realizable value of such security exceeds the claims to be secured by more than 10%; the Seller shall select the security to be released at its own discretion.

9. Export, contractual penalty

9.1 As regards all varieties of which the Seller sells potatoes for planting purposes and which are subject to variety protection to the Seller's benefit according to German plant variety protection law or Council Regulation (EC) No. 2100/94 of 27 July 1994 on Community Plant Variety Rights or to which the Seller holds an exclusive right of use, export of the amounts purchased from the Seller to a country which is not an EU or UPOV member is not permitted. The same applies to exports to countries where there is no plant variety protection.

9.2 The Buyer shall pay to the Seller a contractual penalty in the amount of twice the Z-license fee for every decitonne (dt) of seed potatoes exported in violation of clause 9.1. The amount of the Z-license fee is determined annually by the Seller or its representatives. The contractual penalty is due for payment immediately.

10. Accounting and audit rights, passing on the obligation

10.1 The Buyer shall be obliged to keep proper accounts of the resales and use of the acquired seed potatoes as well as the seed potatoes generated therefrom or from following generations produced thereby and shall, at the request of the Seller, further be obliged to provide such information and copies of the documents - organized by business years - stating the variety in question, the sold or used quantity and the name and address of the purchaser/multipliers in question, to a trustee who shall be appointed by the Seller and obliged to maintain secrecy (or to a delegate named by such trustee who shall be bound to secrecy correspondingly); such documentation shall include a copy, or at least an extract from the respective contracts concluded with the purchasers/multipliers containing the aforementioned information and the further provisions of this section 10. The trustee may be a third party authorised to collect the fees due for farm saved seed (*Nachbauggebühren*).

10.2 The trustee shall be entitled to inspect the accounts and records of the Buyer/the sales organization (*VO-Firma*) with a view to compliance with the aforementioned obligations himself or by an authorised representative who has been obligated accordingly and to verify them and also the fate and whereabouts of the acquired seed potatoes as well as the seed potatoes generated therefrom or from following generations produced thereby.

10.3 In particular, the trustee or his authorised representative may also inspect and examine the fields on which the seed potatoes acquired from the Seller have been sown and the pertinent warehouses in which the acquired seed potatoes and/or the harvest obtained from them (including harvests of subsequent generations of the acquired seed potatoes) are stored. The Buyer shall indicate the fields in question to the trustee or his authorised representative and grant direct access to its facilities, the fields in question and the pertinent warehouses.

10.4 The trustee shall ensure that all the information and documents received are treated confidentially and are, in particular, disclosed towards the Seller only if and insofar as this is necessary within the framework of the discovery or prosecution of the Seller's contractual and/or statutory rights.

10.5 The Buyer will also bindingly impose the obligations resulting from this section 10 on its purchasers/multipliers and obligate them to also bindingly impose on their purchasers the obligations resulting from this section 10 as well as the obligation to forward those obligations to their respective purchasers.

11. Choice of law, arbitration agreement

11.1 The laws of the Federal Republic of Germany shall apply excluding the provisions of private international law and the United Nations Convention on the International Sale of Goods (CISG).

11.2 Taken account of the arbitration agreements of the German Rules and Practices for Trade in Potatoes and the Rules and Practices for Inter-European Trade in Potatoes (RUCIP), the Seller shall also have the right to have recourse to ordinary courts of law.

Court of jurisdiction is the court competent as regards the registered office of the Seller. This does not apply if the Buyer is not a merchant, unless there is no domestic court of jurisdiction. The Seller shall also have the right to take legal action against the Buyer at its place of general jurisdiction.

12 Miscellaneous

Should individual provisions of this contract be or become invalid or void in whole or in part, this shall not affect the validity of the remaining provisions of the contract. The parties undertake to replace the invalid or void provision by an effective provision which comes closest to the intended economic purpose. The same applies in case of a gap.

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