

**Terms and Conditions of Sale and Delivery
of EUROPLANT Pflanzenzucht GmbH**

1. 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.
- 2.1 Unless otherwise specified herein below or in the purchase contract, the Rules and Practices for German Trade in Potatoes (*Deutsche Kartoffelgeschäftsbedingungen*) / Berlin Agreements (*Berliner Vereinbarungen*) as applicable at the time of the signing of the contract shall apply to purchase contracts on **potatoes in Germany**.
- 2.2 Unless otherwise specified herein below or in the purchase contract, the Rules and Practices of the German Trade in Potatoes / Berlin Agreements as applicable at the time of the signing of the contract, the provisions of the German Seed Marketing Act (*Saatgutverkehrsgesetz – SaatG*) as well as the Seed Potatoe Ordinance (*Pflanzkartoffelverordnung – PflKartV*) as from time to time applicable shall apply to purchase contracts on **seed potatoes in Germany**.
- 2.3 Unless otherwise specified herein below or in the purchase 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 potatoes and seed potatoes**.
- 2.4 Upon the Buyer’s request, the Seller shall provide to the Buyer the Rules and Practices for German Trade in Potatoes / Berlin Agreements and the Rules and Practices for Inter-European Trade in Potatoes, including the Rules for Expert Assessment and Arbitration.
- 3.1 The Seller does not accept any differing, contradicting or supplementary general terms of business of the Buyer, unless such terms have been explicitly approved in writing by the Seller. This requirement of approval shall apply at all times, including, for example, in the event that the Seller conducts a delivery without reservations being aware of the Buyer’s general terms of business.
- 3.2 The content of any letter of confirmation is considered agreed upon unless the recipient objects in writing immediately. This, however, shall not apply to the acceptance of general terms of business of the Buyer submitted with any such letter.
- 4.1 Purchase contracts are concluded either by written confirmation by the Seller or by delivery of the goods specified in the purchase contract.
- 4.2 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.
- 5.1 Unless otherwise agreed upon in writing, the purchase price 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 Seller shall be obliged to accept bills of exchange only if there is an explicit written agreement to this effect.
- 5.3 Set-off by the Buyer against claims of the Seller is permitted only in case of uncontested counterclaims or counterclaims which 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. Each individual order to deliver is considered a separate contractual relationship.
- 5.4 The Seller has the right to claim interest on arrears according to section 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.
- 5.5 In all other regards, the legal rights of the Seller shall remain unaffected in the event of default of the Buyer.
6. The Seller shall be entitled to make partial delivery unless this is deemed unreasonable for the Buyer in the individual case. This does, in particular, not the case if (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.
- 7.1 Exclusively a quality agreed upon in writing in the purchase contract shall be deemed an agreed quality (*vereinbarte Beschaffenheit*) pursuant to section 434 para. 1 sentence 1 German Civil Code. Public statements, promotions or advertisements by the Seller or its agents shall not constitute an offer regarding the quality of the goods (*Beschaffungsangebot*) within the meaning of section 434 para. 1 sentence 3 German Civil Code. The Seller is also not liable for public statements made by third parties concerning the quality of the goods, in particular, in advertising or labeling.
- 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 Rules and Practices for German Trade in Potatoes and the Rules and Practices for Inter-European Trade in Potatoes (RUCIP), respectively, which shall have priority. The claiming of damages (including damages in lieu of performance) shall be permitted only in accordance with clauses 7.3 – 7.6.
- 7.3 If notice of defect is given in due time, the Buyer shall first be entitled to subsequent performance; if subsequent performance cannot be made within a reasonable period or if it is impossible due to the quality of the goods, the Buyer may, at its own option, either rescind the contract or reduce the purchase price. The provisions of section 478 German Civil Code as well as the right to claim damages in accordance with clauses 7.4 – 7.6. shall remain unaffected thereby.
- 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*), i.e. obligations essential to achieving the purpose of the contract on compliance with which the Buyer may rely. The Seller shall also be obliged to pay damages if it has assumed a guarantee or if it is liable under product liability law.
- 7.5 Liability for damages in cases of negligent breach of duty and culpable breach of material contractual obligations, i.e. obligations which are essential to achieving the purpose of the contract on compliance with which the Buyer may rely, 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.
- 7.6 If and to the extent that the Seller’s liability is excluded or limited, such exclusion or limitation shall also apply to the personal liability of the employees, representatives or vicarious agents of the Seller.
- 7.7 Claims for defects and consequential damage resulting from defects shall be subject to a limitation period of 1 year as of the transfer of risk. All other claims shall expire 1 year after the point in time determined in section 199 para. 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.
- 8.1 All goods delivered by the Seller to the Buyer remain the property of the Seller until all claims resulting from the business relationship with the Buyer have been settled (goods subject to retention of title).
- 8.2 The Buyer does not acquire ownership by processing, joining, mixing or comingling (the “**Processing**”) of goods subject to retention of title as this is done by the Buyer on behalf of the Seller. If the Buyer processes, joins, mixes or commingles goods subject to retention of title 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 value of the goods subject to retention of title 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. If (co-)ownership should not be acquired by the Seller but the Buyer acquires 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 goods subject to retention of title; the parties agree that the Buyer stores 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. 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 (goods subject to retention of title).
- 8.3 The Buyer may sell goods subject to retention of title only within the scope of the regular course of business. All claims of the Buyer resulting from a re-sale of goods subject to retention of title 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. 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.

- 8.4 The Seller reserves the right to revoke the right to sell goods subject to retention of title and the authorization to collect claims assigned to the Seller if the Buyer is in arrears with payment, files an application for insolvency 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.
- 8.5 In case of a seizure of goods subject to retention of title 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 goods subject to retention of title 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.
- 8.8 If the Buyer is in arrears and fails to make payment within a grace period set by the Seller, the Seller has the right to take the goods back; if the goods are taken back, the contract shall be considered rescinded.
- 8.9 The Seller also has the right to rescind a purchase contract without notice if the Buyer is insolvent or if insolvency proceedings have been opened. Claims for damages of the Buyer – unless permitted pursuant to clauses 7.4 – 7.6 – shall be excluded in this context.
- 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 At the request of the Seller, the Buyer is obliged to provide the names and addresses of all contracting parties to whom the Buyer has delivered or sold planting material which had been received from the Seller as well as the respective invoice numbers, business years concerned, varieties and quantities to a trustee obliged to maintain secrecy, who shall be appointed by the Seller. The trustee may be a third party assigned to collect the fees due for farm saved seed (*Nachbauebühren*). Any information to the Seller is provided by the trustee in compliance with antitrust and data protection regulations and only if there are specific indications that this is necessary for the enforcement of the Seller's contractual and/or statutory rights.
- 9.3 The Buyer shall pay to the Seller a contractual penalty in the amount of twice the Z-license for every decitonne (dt) of seed potatoes exported in violation of clause 9.1. The amount of the Z-license is determined annually by the Seller or its representatives. The contractual penalty is due for payment immediately.
- 10.1 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).
- 10.2 Taken account of the arbitration agreements of the Rules and Practices for German Trade in Potatoes and the Rules and Practices for Inter-European Trade in Potatoes (RUCIP), the Seller also has 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 also has the right to take legal action against the Buyer at its place of general jurisdiction.

10.3 Should individual provisions of this contract be or become invalid or void entirely or in parts, 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 the case of a gap.

10.4 Amendments or additions to these Terms and Conditions of Sale and Delivery as well as oral agreements and commitments of any kind must be made in writing. This also applies to any waiver of this written form requirement. Separate agreements with the Buyer made with respect to an individual case shall have priority over these Terms and Conditions of Sale and Delivery. For the content of such agreements, a written contract or the written confirmation of the Seller is decisive.

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