

## Terms and conditions of business Vegetalis Ltd 2018-19

The customer's attention is drawn in particular to the provisions of clause 11.

### **1 Interpretation**

1.1 **Definitions.** In these Conditions, the following definitions apply:

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**"Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6;

**"Contract"** means the contract between Vegetalis and the Customer for the sale and purchase of the Seeds in accordance with these Conditions;

**"Customer"** means the person or firm who purchases the Seeds from Vegetalis;

**"Economic Sanctions"** means any applicable economic, financial or other sanctions, laws, regulations or embargoes administered and enforced from time to time by the United Nations Security Council, the European Union, or the governmental institutions and agencies of the United States of America or the United Kingdom.

**"Force Majeure Event"** has the meaning given in clause 13;

**"Intellectual Property Rights"** means all applicable plant breeder rights, patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Order"** means the Customer's order for the Seeds, as set out in the Customer's purchase order form or the Customer's written acceptance of Vegetalis's quotation as the case may be;

**"Relevant Event"** means those events set out in clause 10.2;

**"Seeds"** means the seeds and/or any other goods set out in the Order;

“**Specification**” means any specification for the Seeds, including any purity level or germination rates, which are agreed in writing by the Customer and Vegetalis;

“**Vegetalis**” means Vegetalis Limited (registered in England and Wales with company number 6725677) which has its registered address at Norwich Road, Foxley, Dereham, Norfolk, NR20 4SS;

“**Warranty**” means the warranty given in clause 5.1.

1.2 In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

## **2 Basis of contract**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Seeds in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Vegetalis issues a written acceptance of the Order (the “**Order Confirmation**”), at which point the Contract shall come into existence. In the event of conflict between the terms of the Order Confirmation and these Conditions, the terms of the conditions shall prevail, unless otherwise agreed in writing by a Director of Vegetalis.

- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Vegetalis which is not set out in the Contract.
- 2.5 Any descriptive matter, or advertising produced by Vegetalis and any descriptions or illustrations contained in Vegetalis's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Seeds described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 Any seed samples offered by Vegetalis are usually offered free of charge, any customer accepting sample seed does so under the Vegetalis terms and conditions of business 2018-19.
- 2.7 A quotation for the Seeds given by Vegetalis shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

### **3 Seeds**

- 3.1 The Seeds are described in the Order.
- 3.2 Vegetalis reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.3 Minimum orders for each variety of Seed shall be the lowest quoted unit. The total quantity of Seed ordered from any one series will determine the price to be charged. If an order is for less than the minimum, Vegetalis may nevertheless accept the order when the order price shall be the lowest quoted unit price plus 20%.

### **4 Delivery**

- 4.1 Vegetalis shall ensure that:
- 4.1.1 each delivery of the Seeds is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Vegetalis reference numbers, the type and quantity of the Seeds (including the code number of the Seeds, where applicable), special storage instructions and, if the Order is being delivered by instalments, the outstanding balance of Seeds remaining to be delivered; and
- 4.1.2 if Vegetalis requires the Customer to return any packaging materials to Vegetalis, that fact is clearly stated on the delivery note, in which case the Customer shall make any such packaging materials available for collection at such times as Vegetalis shall reasonably request and returns of packaging materials shall be at the Customer's expense.

- 4.2 Vegetalis shall deliver the Seeds to the location set out in the Order or such other location as the parties may agree (“the **Delivery Location**”) at any time after Vegetalis notifies the Customer that the Seeds are ready. Incoterms® valid at the date of conclusion of the agreement will apply. Delivery will be Carriage and Insurance Paid To (CIP as per Incoterms® 2012). If the parties fail to agree a Delivery Location and no Delivery Location is set out in the Order, the Delivery Location shall be Vegetalis Limited, Norwich Road, Foxley, Dereham, Norfolk, NR20 4SS, United Kingdom, unless the Customer is based in the United States of America or Canada, in which case the Delivery Location shall be 5 Pequignot Dr. Suite B., Pierceton, IN 46562.
- 4.3 Delivery of the Seeds shall be completed on the Seeds’ arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Vegetalis shall not be liable for any delay in delivery of the Seeds that is caused by a Force Majeure Event or the Customer’s failure to provide Vegetalis with adequate delivery instructions or any other instructions that are relevant to the supply of the Seeds.
- 4.5 All seed is sold subject to availability. All reasonable efforts will be made to meet delivery dates but these are not guaranteed. Delivery may be made by more than one consignment and each consignment shall be treated as a separate contract. If Vegetalis is delayed or prevented from performing the contract by any reason outside its reasonable control (including shortage of crop or market shortages) then Vegetalis shall not be liable for any loss or damage which may be thereby suffered by the purchaser and shall be entitled to suspend or terminate the contract without such liability. The apportionment of available seed between purchasers shall be at the discretion of Vegetalis.
- 4.6 If the Customer fails to accept delivery of the Seeds or if Vegetalis is unable to deliver the Seeds on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, then, except where such failure or delay is caused by a Force Majeure Event or Vegetalis’s failure to comply with its obligations under the Contract:
- 4.6.1 the Seeds shall be deemed to have been delivered;

- 4.6.2 Vegetalis shall store the Seeds until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
- 4.6.3 if 10 Business Days after the day on which Vegetalis notified the Customer that the Seeds were ready for delivery the Customer has not accepted delivery of them, Vegetalis may resell or otherwise dispose of part or all of the Seeds and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Seeds or charge the Customer for any shortfall below the price of the Seeds.
- 4.7 The Customer shall not be entitled to reject the Seeds if Vegetalis delivers up to and including 5% more or less than the quantity of Seeds ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Seeds was delivered.
- 4.8 Vegetalis may deliver the Seeds by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5 Quality**
- 5.1 Vegetalis warrants that on delivery the Seeds shall, subject to clause 5.2, conform in all material respects with the Specification.
- 5.2 Any purity level or germination rates prescribed in the Specification have been reached or could be reached by following Vegetalis's own Seed testing processes (details of which are available on request). Vegetalis does not warrant that the Customer will achieve equivalent germination rates under any other conditions.
- 5.3 Subject to clause 5.4, if:
- 5.3.1 the Customer gives notice in writing to Vegetalis within 3 days of delivery (or in the case of a latent defect in the Seeds, within 3 days after the latent defect has become apparent) that some or all of the Seeds do not comply with the Warranty;
- 5.3.2 Vegetalis is given a reasonable opportunity of examining or testing such Seeds (for example germination tests or grow out); and
- 5.3.3 the Customer (if asked to do so by Vegetalis) returns such Seeds to Vegetalis's place of business at the Customer's cost;

then Vegetalis shall, at its option and after any such testing or examining, either replace the defective Seeds or refund the price of the defective Seeds in full.

5.4 Vegetalis shall not be liable for the Seeds' failure to comply with the Warranty in any of the following events:

5.4.1 the defect arises because the Customer failed to follow Vegetalis's oral or written instructions as to the transportation, storage, planting or cultivation of the Seeds including any guidance related to the Seeds provided on Vegetalis's website ([www.vegetalis.com](http://www.vegetalis.com)) or (if there are none) good trade practice regarding the same;

5.4.2 the Customer alters such Seeds without the written consent of Vegetalis;

5.4.3 the defect arises as a result of wilful damage, negligence, or abnormal storage or growing conditions; or

5.4.4 the Seeds differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements or the Customer's instruction.

5.5 Except as provided in this clause 5, Vegetalis shall have no liability to the Customer in respect of the Seeds' failure to comply with the Warranty.

5.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.7 These Conditions shall apply to any replacement Seeds supplied by Vegetalis.

## **6 Marketing**

6.1 The Customer shall not, without Vegetalis's prior written consent:

6.1.1 sell the Seeds under any other logo or trademark other than Vegetalis's logo or trademark; or

6.1.2 sell the Seeds under any other name than that supplied to it by Vegetalis.

6.2 The Customer may use any marketing material supplied to the Customer by Vegetalis.

## **7 Intellectual Property**

7.1 All Intellectual Property Rights remain Vegetalis's and no Intellectual Property Rights are granted to the Customer, without the specific written consent of Vegetalis.

7.2 The Customer shall not use the Seeds for reproduction in any manner without the prior written consent of Vegetalis.

## **8 Title and risk**

- 8.1 The risk in the Seeds shall pass to the Customer on delivery.
- 8.2 Title to the Seeds shall not pass to the Customer until Vegetalis has received payment in full (in cash or cleared funds) for:
- 8.2.1 the Seeds; and
  - 8.2.2 any other goods or services that Vegetalis has supplied to the Customer in respect of which payment has become due.
- 8.3 Until title to the Seeds has passed to the Customer, the Customer shall:
- 8.3.1 hold the Seeds on a fiduciary basis as Vegetalis's bailee;
  - 8.3.2 store the Seeds separately from all other goods held by the Customer so that they remain readily identifiable as Vegetalis's property;
  - 8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Seeds;
  - 8.3.4 maintain the Seeds in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 8.3.5 notify Vegetalis immediately if it becomes subject to any Relevant Event; and
  - 8.3.6 give Vegetalis such information relating to the Seeds as Vegetalis may require from time to time;
- but the Customer may resell or use the Seeds in the ordinary course of its business.
- 8.4 If before title to the Seeds passes to the Customer the Customer becomes subject to any Relevant Event, or Vegetalis reasonably believes that the Customer is about to become subject to a Relevant Event and notifies the Customer accordingly, then, provided that the Seeds have not been resold, or irrevocably mixed with third parties seeds, and without limiting any other right or remedy Vegetalis may have, Vegetalis may at any time require the Customer to deliver up the Seeds and, if the Customer fails to do as soon as practicable, enter any premises of the Customer or of any third party where the Seeds are stored in order to recover them.

## **9 Price and payment**

- 9.1 The price of the Seeds shall be the price set out in the Order, or, if no price is quoted, the price set out in Vegetalis's published price list in force as at the date of delivery.
- 9.2 Payment of all invoices must be made in the currency of the invoice by direct credit to Vegetalis's own bank account, details of which can be obtained from the accounts department, or for Sterling sales by a cheque drawn on a London clearing bank.



- 9.3 The minimum charge for each order invoiced will be £50.00 or equivalent.
- 9.4 Vegetalis may, by giving notice to the Customer at any time before delivery, increase the price of the Seeds to reflect any increase in the cost of the Seeds that is due to:
- 9.4.1 any factor beyond Vegetalis's control (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other production costs);
- 9.4.2 any request by the Customer to change the delivery date(s), quantities or types of Seeds ordered, or the Specification; or
- 9.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give Vegetalis adequate or accurate information or instructions.
- 9.5 The price of the Seeds is exclusive of the costs and charges of packaging, insurance, import and plant health documents, bank charges, incidentals and transport of the Seeds, which shall be invoiced to the Customer where appropriate.
- 9.6 Seeds shall be packed by Vegetalis in their standard packaging. Requests for multiple packaging may, at the sole discretion of Vegetalis, be considered and if agreed shall be charged to the Customer at the rate of £0.50 per unit or equivalent.
- 9.7 The price of the Seeds is exclusive of amounts in respect of value added tax or any other similar sales tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from Vegetalis, pay to Vegetalis such additional amounts in respect of VAT as are chargeable on the supply of the Seeds.
- 9.8 Unless otherwise set out in the Order, Vegetalis may invoice the Customer for the Seeds on or at any time after the completion of delivery.
- 9.9 The Customer shall pay the invoice in full and in cleared funds within 60 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Vegetalis. Time of payment is of the essence.
- 9.10 If Vegetalis receives cleared funds for the full amount of an invoice within 30 days of the date of an invoice, the Customer shall be entitled to a 1% discount on the value of that invoice.
- 9.11 If the Customer fails to make any payment due to Vegetalis under this agreement by the due date for payment, then, without limiting any other remedies Vegetalis may have under this Agreement, Vegetalis may claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.



- 9.12 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Vegetalis in order to justify withholding payment of any such amount in whole or in part. Vegetalis may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Vegetalis to the Customer.
- 9.13 Vegetalis reserves the right to suspend performance of any of its obligations under the Contract or any other agreement with the Customer until payment is made in full for any overdue invoice.

**10 Customer's insolvency or incapacity**

- 10.1 If the Customer becomes subject to any Relevant Event, or Vegetalis reasonably believes that the Customer is about to become subject to a Relevant Event and notifies the Customer accordingly, then, without limiting any other right or remedy available to Vegetalis, Vegetalis may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Vegetalis without incurring any liability to the Customer, and all outstanding sums in respect of Seeds delivered to the Customer shall become immediately due.
- 10.2 Relevant Events are:
- 10.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 10.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- 10.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 10.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;
  - 10.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 10.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - 10.2.7 (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - 10.2.8 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 10.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.1 to clause 10.2.8 (inclusive);
  - 10.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; and
  - 10.2.11 the Customer's financial position deteriorates to such an extent that in Vegetalis's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 11 **Limitation of liability**

- 11.1 Nothing in these Conditions shall limit or exclude Vegetalis's liability for:

- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 11.1.2 fraud or fraudulent misrepresentation;
  - 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 11.1.4 any matter in respect of which it would be unlawful for Vegetalis to exclude or restrict liability.
- 11.2 Subject to clauses 5.5 and 11.1:
- 11.2.1 Vegetalis shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for 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; and
  - 11.2.2 Vegetalis's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 150% of the price of the Seeds received by Vegetalis.
- 12 Dispute resolution**
- 12.1 If any dispute arises in connection with the Contract, directors or other senior representatives of the parties with authority to settle the dispute will, within 5 days of a written request from one party to the other, meet or discuss in a good faith effort to resolve the dispute.
  - 12.2 Should mediation in accordance with clause fail to resolve the dispute within 21 days of its commencement, either party may apply for the dispute to be settled by arbitration in accordance with the ISF's Procedure Rules for Dispute Settlement for the Trade in Seeds for farming purposes and for the Management of Intellectual Property as amended from time to time, and any such arbitration shall be binding on the parties.
  - 12.3 Any dispute relating to the germination percentage of the Seeds will be decided by an inspection by **NAKTuinbouw** or with any other independent and internationally recognised expert (an "**Expert**"). The findings made by the Expert shall be binding on both parties. Both parties shall equally share the costs of the Expert.

### 13 **Force majeure**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A “**Force Majeure Event**” means any event beyond a party’s reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, disease affecting the Seeds, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions.

### 14 **General**

#### 14.1 **Assignment and subcontracting.**

14.1.1 Vegetalis may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.1.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Vegetalis.

#### 14.2 **Notices.**

14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second Business Day after posting; if delivered by commercial

courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

14.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 **Severance.**

14.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Vegetalis.

14.7 **Governing law and jurisdiction.** The Contract, 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, English law. Subject to clause 12, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

14.8 **Economic Sanctions.** Notwithstanding any other provision of these Conditions to the contrary, Vegetalis shall not be required by the terms of the Contract to be directly or indirectly involved in the provision of goods that may be prohibited by

Economic Sanctions. The Customer shall take all reasonable steps to ensure that where it is required to provide any entity/third party with any goods supplied to the Customer by Vegetalis, it shall take steps to ensure that any such provision of goods to such entity is not subject to restrictions or prohibitions under Economic Sanctions.