

## **1. Scope of application**

1.1 The following Terms and Conditions apply to all offers, deliveries, services and associated legal transactions of Interseed Potatoes GmbH (hereinafter referred to as “Seller”) in relation to all buyers who are entrepreneurs within the meaning of section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law (hereinafter referred to as “Buyer”).

1.2 Differing or supplementary terms and conditions are not recognised unless they are agreed to individually in writing.

1.3 In regard to the domestic and international trade in potatoes, the latest version of the Rules & Practices of the Inter-European Trade in Potatoes/RUCIP in force at the time when the contract is concluded shall apply.

1.4 At the request of the Buyer, the Seller shall send the Rules & Practices of the Inter-European Trade in Potatoes/RUCIP to the Buyer.

## **2. Conclusion of contract**

2.1 All offers with regard to quantity, price, samples and delivery time are without obligation unless we have made a written and express binding offer. Prices are ex works. We accept no responsibility for transmission or communication errors relating to telegrams, telexes, faxes or telephone conversations.

2.2 Sales contracts shall only come about by written acknowledgement by the Seller or by delivery of the goods designated in the sales contract.

2.3 Due to the nature of the raw materials, samples are deemed non-binding generic samples.

2.4 The place of performance is the Seller’s registered office.

## **3. Terms of payment**

3.1 Unless otherwise contractually agreed, payment of the invoice shall be made without deduction within 14 days of receipt of the invoice, excluding set-off or right of retention. Section 193 BGB applies.

3.2 If payment has not been made within this period, the Buyer is obliged to pay late payment interest of 4% p.a. above the current 3-month EURIBOR interest rate.

3.3 If the Buyer's financial situation deteriorates or if the claim to payment is otherwise endangered, the Seller is entitled, even after prior acknowledgement of the order, to demand at its own discretion the provision of collateral or prepayment of the invoice amount. In addition, all outstanding payments, including bills of exchange or other means of payment, may be made payable immediately by the Seller in such cases. Apart from the announcement of bankruptcy/insolvency or composition proceedings, we

understand deterioration in the financial situation to mean, in particular, failure to meet other payment deadlines.

3.4 The supplied goods shall remain the property of the Seller until the entire amount due has been paid in full, with possible rights under sections 43 and 46 of the German Insolvency Act (Insolvenzordnung).

3.5 Furthermore, the statutory rights of the Seller shall remain unaffected in the event of default by the Buyer.

#### **4. Defects and compensation**

4.1 Only the quality agreed in writing in the sales contract shall be deemed to constitute the agreed quality as defined by section 434 (1) sentence 1 BGB. The Seller shall not be liable for public statements made by third parties regarding the quality of the goods, in particular in advertising or labelling.

4.2 Claims by the Buyer on account of defects are subject to the Buyer having duly fulfilled its obligations to inspect and to give notice of defects according to sections 377, 381 of the German Commercial Code (HGB), but, in particular, the RUCIP Rules & Practices.

4.3 In addition to Article 25 of the RUCIP Rules & Practices, in the event of damage for which the Buyer wishes to claim compensation from the Seller, the maximum costs shall be the invoice amount of the goods to which the justified complaints refer.

4.4 The Seller cannot be made liable for defects if it is only informed by the Buyer after the seed potatoes have been planted.

4.5 In the event of damage, the Buyer is obliged to keep this damage to a minimum in order to avoid further damage to the product (obligation to minimize damage).

4.6 Liability for damages in case of negligent breach of duty and culpable breach of essential contractual obligations, i.e. those obligations which are indispensable for the attainment of the contractual purpose and on the fulfilment of which the Buyer is entitled to rely, is limited to the foreseeable, typically occurring damage. Liability for culpable loss of life, physical injury or damage to health as well as liability under the German Product Liability Act shall remain unaffected by this limitation.

#### **5. Reservation of title and terms of sale**

5.1 Seed material of varieties subject to plant breeders' rights may not be used for further propagation of those varieties, unless a written agreement to that effect, containing a provision for fair payment, has been concluded with the seller.

5.2 Seed materials subject to plant breeders' right can solely be planted in the agreed country of destination if not agreed otherwise with the seller.

5.3 Upon the seller's first request the buyer or a nominated third party is obliged to provide the seller with all the names and addresses, including details of quantity, variety, class and size of parties to whom the seller has delivered or sold seed potatoes originating from the seller.

5.4 The buyer grants the seller or its nominated third party the right to inspect, test and check all fields planted with seed potatoes bought from the seller. The buyer, if so requested by the seller and/or its representatives, must point out all fields planted with seed potatoes originating from the seller.

5.5 The buyer is obliged to grant supervisory powers carrying out inspections on behalf of the seller direct access to its business and the potatoes, either in the field or stored, in respect of a protected variety delivered to the buyer. If so requested, the buyer must also provide direct access to its administrative records that are relevant to the investigation, including invoices.

5.6 In the event the seller is drawn into proceedings in respect of plant breeders' rights or other industrial property rights, the buyer is obliged to render all assistance as desired by the seller, including assistance in the collection of evidence.

5.7 In the event of resale of seed materials of varieties that are subject to plant breeders' rights, the buyer is obliged to stipulate with its customer(s) the provisions of articles 5.1 to 5.7. The buyer is at all times responsible for compliance with these obligations by its customer(s).

5.8 If the buyer does not comply with the above-mentioned conditions, the seller is entitled to claim damages, including but not limited to loss of profit.

## **6. Impossibility and delays in delivery; partial deliveries**

6.1 The Seller shall not be liable for the impossibility of delivery or for delays in delivery if they are caused by force majeure (as defined by RUCIP, Article 27) or other events not foreseeable at the time of concluding the contract (e.g. extreme weather conditions, such as frost, rain, drought or crop failure, pests or disease, complete or partial destruction of or damage to goods, storms, lockouts, energy shortages, virus pandemic), for which the Seller is not responsible. The Seller has the right to withdraw from the contract in whole or in part by written declaration if such events are not only of temporary duration and if they make it impossible or considerably more difficult for the Seller to deliver or perform.

6.2 The Seller is entitled to render partial deliveries if this is reasonable for the Buyer in the individual case. This applies in particular if the delivery rendered can be used by the Buyer in a meaningful way, based on the purpose of the contract, delivery of the remaining ordered quantity is ensured, and the Buyer does not have to bear the additional costs/expenses involved, or no such additional costs/expenses are incurred by the Buyer.

6.3 The Seller shall be discharged from one or of all the obligations contained in the contract in the event of force majeure (as defined by RUCIP, Article 27) or other unforeseeable events (e.g. extreme weather conditions, such as frost, rain, drought or crop failure, pests or disease, complete or partial destruction of or damage to goods, storms, lockouts, energy shortages, virus pandemic), for which the Seller is not responsible.

## **7. Interference with the basis of the transaction section 313 BGB; Reservation of self-supply**

7.1 If circumstances which have become the basis of the contract have significantly changed since the contract was entered into, and if the parties would not have entered into the contract, or would have done so with different content, if they had foreseen this change, adaptation of the contract may be demanded if, taking account of all the circumstances of the specific case, in particular the contractual or statutory distribution of risk, one of the parties cannot reasonably be expected to uphold the contract without alteration.

7.2 It is equivalent to a change of circumstances if material conceptions that have become the basis of the contract are found to be incorrect.

7.3 If adaptation of the contract is not possible or one party cannot reasonably be expected to accept it, the disadvantaged party may revoke the contract. In the case of continuing obligations, the right to

terminate takes the place of the right to revoke.

7.4 Proper and timely self-deliveries are reserved. If the ordered product is not available because the Seller was not supplied by her supplier through no fault of her own, the Seller can withdraw from the contract. In this case, the Seller will inform the Buyer immediately and, in the event of a withdrawal, reimburse any payments already made.

## 8. **Applicable law**

8.1 German law shall apply to this contractual relationship to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

8.2 In respect to the arbitration agreement of the RUCIP Rules & Practices, the Seller also has the option of recourse to the courts of law.

8.3 The place of jurisdiction for the assertion of all mutual claims is Aurich.

8.4 The above Terms and Conditions shall be deemed to have been agreed for the entire and future business relations, even if this has not been specifically agreed in individual cases. The Buyer's terms and conditions of purchase shall only apply if they are consistent with the above Terms and Conditions or have been expressly recognised in writing by the Seller.

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