

## 1. Definitions

- 1.1 TopSeed and / or TopSeed B.V.: a corporation, registered at the Dutch Trade Register of the Chamber of Commerce under number 71989587
- 1.2 Other Party: Any party that has entered into an agreement with TopSeed and/or submitted an offer to TopSeed and/or whom TopSeed has submitted an offer to.
- 1.3 TopSeed Trading Conditions: the foregoing general trading conditions.
- 1.4 RUCIP conditions: the coherent whole of the Règles et Usages du Commerce Intereuropeen des Pommes de Terre 2017, as well as the 2017 Expertise and Arbitration Regulations of the European Committee.
- 1.5 AHP conditions: 2015 NAO (Dutch Potato Organisation) Trading conditions for seed potatoes, with corresponding Arbitration Regulations June 2015.
- 1.6 AHV conditions: General Trading Conditions for the potato wholesale trade with corresponding Arbitration Regulations of 1 September 1986.
- 1.7 VAVI potatoes: 2009 purchase conditions of the potatoes in the industry/trade and Arbitration Regulations.

## 2. Applicability

- 2.1 The TopSeed Trading Conditions exclusively apply to all offers and quotations to and by TopSeed and all agreements entered into by TopSeed and all related obligations.
- 2.2 In addition to the TopSeed Trading Conditions, the following apply, depending on the legal relationship between TopSeed and the Other Party:
- a. RUCIP conditions: if the agreement is entered into with an Other Party outside the Netherlands;
  - b. NHP conditions: if the agreement concerns seed materials and is entered into with an Other Party in the Netherlands;
  - c. AHV conditions: if the agreement concerns ware potatoes and is entered into with an Other Party in the Netherlands;
  - d. VAVI conditions: if the agreement concerns the sale of potatoes by TopSeed to the potato processing industry in the Netherlands;
- 2.3 In the event of conflicts between the TopSeed Trading Conditions and the applicable RUCIP, NHP, AHV or VAVI conditions, the TopSeed Trading Conditions prevail.
- 2.4 The applicability of the general terms and conditions, by whatever name, of the Other Party, is hereby explicitly excluded.
- 2.5 Such terms and conditions varying from the TopSeed Trading Conditions and the applicable RUCIP, NHP, AHV or VAVI conditions can only be agreed in writing and are subject to the explicit written confirmation thereof by TopSeed.

## 3. Applicable law and arbitration

- 3.1 All legal relationships between TopSeed and its Other Party are governed by Dutch law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods; Vienna, 11 April 1980 (Vienna Sales Convention / CISG). TopSeed Trading Conditions
- 3.2 Arbitration occurs according to the Arbitration Regulations that are included in the applicable RUCIP, NHP, AHV or VAVI conditions via Article 2.2 of the TopSeed Trading Conditions. Contrary to the statement(s) in the Arbitration Regulations, all disputes shall be subject to arbitration in accordance with the regulations of the Dutch Foundation Institute for Agricultural Law. The explicitly agreed upon place of arbitration shall be in Wageningen, the Netherlands and the Foundation Institute for Agricultural Law shall act as the arbitration agency. This Foundation Institute for Agricultural Law is authorized to form an arbitration committee according to its discretion if it emerges that forming the arbitration committee is not/no longer possible according to the conditions mentioned below.
- 3.3 Without prejudice to the stipulations in article 3.2, TopSeed shall be entitled to submit to the District Court of Midden Nederland, location Lelystad in the Netherlands claims in respect of monies due, of which the liability to pay is not disputed within four weeks of the invoice date, or claims that are urgent in nature. All collection costs, both judicial and extrajudicial, shall be at the expense of the Other Party. Judicial costs include actual costs incurred by TopSeed due to charges by lawyers, bailiffs and experts. The extrajudicial costs payable are 15% of the principal sum, subject to a minimum of two hundred and fifty (€250) Euros.

## 4. Liability

- 4.1 Any shortages, flaws and damage must, subject to forfeiture, be reported by the Other Party to TopSeed in writing within 6 working hours after delivery. Contrary to the provisions in the RUCIP and the NHP conditions, TopSeed cannot be held liable for defects, if the complaint is submitted to TopSeed at a time that the seed materials had already been planted.
- 4.2 Contrary to the provisions in the RUCIP, NHP, AHV or VAVI conditions, the liability of TopSeed is at all times limited to direct damage, with a maximum of the invoice amount (excl VAT) of the part which the damage relates to.
- 4.3 In the event of damage, the Other Party is obliged to limit this to a minimum.
- 4.4 If the Other Party fails to fulfil any of its obligations, TopSeed has the right to dissolve the agreement, without any notice of default being required and the Other Party shall be obliged to fully compensate TopSeed for the damage suffered by them due to this non-performance, including any loss of profits. The damages shall at least include the difference between the agreed purchase price with the Other Party and the daily price on the date of non-performance.
- 4.5 The goods delivered to TopSeed shall in no way violate the intellectual property rights (including but not limited to patent, license, copyright, design, trademark and/or trade name) of third parties. The Other Party that sells goods to TopSeed, indemnifies TopSeed for any claims as a result of such a violation and shall fully compensate the damages resulting therefrom.

## 5. Payment and retention of title

- 5.1 Payment must be effected by the Other Party within 30 days of the invoice date, unless otherwise agreed in writing, regardless of the fact whether the goods were lost and/or sustained damage during transit. In the event of non-payment within the agreed term, the Other Party shall owe interest of 12% per year, in which part of a month shall be deemed a full month, without the need for a notice of default.
- 5.2 At any time during the term of the agreement, TopSeed may demand security or additional security for payment by the Other Party, provided the Other Party gives reasonable rise to this. If the Other Party fails to comply with a reasonable request for security, TopSeed shall be entitled to suspend its obligations or to terminate the agreement and claim compensation.
- 5.3 All goods supplied remain the property of TopSeed until full payment has been received for all that the Other Party owes by virtue of the agreement. If TopSeed will rely on its retention of title, in the event of late payment, a moratorium on payment or insolvency of the Other Party, TopSeed shall be entitled to repossess the goods delivered by them and access the grounds and buildings where the goods are stored.

## 6. Sale of seed materials subject to plant breeder's right

6.1 Seed material of varieties subject to plant breeder's rights may only be used for further propagation of those varieties, if this is agreed with TopSeed in writing to that effect and the agreement contains a provision for fair payment.

6.2 Seed materials subject to plant breeder's right can solely be planted in the agreed country of destination.

6.3 If so requested by TopSeed, the Other Party is obliged to provide TopSeed with all names and addresses of parties to whom the Other Party sold seed materials from TopSeed.

6.4 The Other Party grants TopSeed and its representatives the right to inspect, test and check all fields planted with seed potatoes bought from TopSeed. The Other Party, if so requested by TopSeed and/or its representatives, must point out all fields planted with seed potatoes originating from TopSeed.

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

6.6 In the event TopSeed is drawn into proceedings in respect of plant breeder's rights or other industrial property rights, the Other Party is obliged to render all assistance as desired by TopSeed, including assistance in the collection of evidence.

6.7 In the event of resale of seed materials of varieties that are subject to plant breeder's rights, the Other Party is obliged to stipulate with its customer(s) the provisions of articles 6.1 to the Other Party is at all times responsible for compliance with these obligations by its customer(s).

## 7. Quality standards

7.1 TopSeed supplies seed potatoes subject to the standards the class of seed potatoes to be delivered must meet as stipulated in the inspection regulations of an officially certifying body. TopSeed gives no additional guarantees, unless explicitly agreed otherwise.

7.2 TopSeed reserves the right to apply more stringent standards than the officially certifying organisations as its purchasing policy.

## 8. Force majeure

8.1 If, due to force majeure, TopSeed is unable to fulfil any obligation it has towards the Other Party and, in the opinion of TopSeed, the force majeure event is of a temporary nature or a passing phase, TopSeed shall be entitled to suspend performance of the agreement until the circumstance, reason or event causing the force majeure situation has ceased to exist.

8.2 If after a force majeure event as referred to in this article the circumstances have changed to the extent that TopSeed cannot reasonably be expected to perform the agreement anymore, TopSeed shall be entitled to dissolve the agreement. If the force majeure event with regard to potatoes grown in any year still exists on 15 July of the subsequent year, the agreement shall be dissolved by operation of law on that date, without the right to compensation.

8.3 Notwithstanding the force majeure clauses in the RUCIP, NHP, AHV and/or VAVI conditions, force majeure applies, but is not limited to, in all of the following events: strikes; walkouts; government measures and/or regulations preventing, delaying or otherwise impeding the fulfilment of obligations; lack of means of transport; any possible routes or means of transport being impassable or unusable; interruptions in the supply of energy, raw materials, semi-finished or end products; non-performance by its supplier; insufficient stock due to weather conditions and quarantine diseases, technical breakdowns and/or defects.

8.4 In the event of governmental measures that obstruct the import, transit or export of purchased or sold goods or lead to a financial disadvantage, TopSeed has the right to dissolve, in as far as it is not performed, the agreement, without the right to compensation.

## 9. Restricted Harvest Clause

9.1 All sales of TopSeed are subject to harvest. If due to a disappointing harvest in terms of quantity or quality of the potatoes fewer products are available, which includes rejects by bodies competent to that effect, than was reasonable to expect upon conclusion of the agreement, TopSeed has the right to reduce the quantity it sells accordingly. The above also applies if the products bought through cultivation contracts prove to be insufficient to satisfy all customers of TopSeed. By supplying this reduced quantity TopSeed thus fully meets its obligations to deliver. In that instance, TopSeed is not obliged to supply replacement products, nor can TopSeed be held liable for any damage.

## 10. Right of Retention

10.1 Towards anyone who demands surrender thereof, TopSeed has a right of retention on all goods, documents and monies of the Other Party, regardless of their destination, held by TopSeed, for as long as the Other Party has not fulfilled all its obligations towards TopSeed, in respect of all current and future claims TopSeed has against the Other Party.

## 11. Validity

11.1 If any provision of the TopSeed Trading Conditions is partly or fully invalidated and/or is unenforceable, the validity of all other provisions of the TopSeed Trading Conditions shall remain unaffected. If a provision of the TopSeed Trading Conditions is invalid, parties have deemed to agree on a valid provision that matches the scope of the invalid provision as much as possible.

The TopSeed Trading Conditions can be consulted at [www.topseed.nl](http://www.topseed.nl). A copy shall be sent upon first request, free of charge. In the event of conflicts between the Dutch wording of the TopSeed Trade Conditions and versions of these conditions in languages other than the Dutch language, the Dutch text shall prevail.