

CONDITIONS OF PURCHASE FOR SEED POTATOES

British Potato Trade Association and approved by the National Farmers' Union of Scotland)

1 PARTIES

In these Conditions of Purchase the person firm or Company placing the order is referred to as "the Buyer" and the person firm or Company Selling is referred to as "the Seller".

2 BASIS AND APPLICATION

(1) All prices quoted by the Buyer are based upon these Conditions of Purchase and reflect the limitations upon liability which they contain. Should any Seller wish to contract with the Buyer otherwise than on the terms of such Conditions of Purchase special arrangements can be made prior to the purchase.

(2) In the absence of any special arrangements (which shall not bind the Buyer unless made in writing and signed on the Buyer's behalf by a person duly authorised for that purpose) all quotations given and all contracts made by the Buyer and any additions or amendments thereto shall be subject to these Conditions of Purchase which supersede and shall be taken to override any terms or conditions proposed or stipulated by the Seller.

3. CONSUMERS AND NEGLIGENCE

- (1) Nothing in these Conditions shall affect the statutory rights of a Buyer who in relation to the Seller "deals as consumer" as defined in Section 12 of the Unfair Contract Terms Act 1977 or any amendment or modification thereto. (A commercial potato grower would not be classed as a "consumer").
- (2) Nothing in these Conditions shall affect any liability which the Buyer may incur for death or personal injury resulting from negligence.

4 CLASSIFIED SEED POTATOES

In these Conditions of Purchase "classified seed potatoes" shall mean seed potatoes from stocks of the same variety and grade for which a Certificate or Report has been issued on the growing crop by the Department or Ministry of Agriculture or other official control or classification services of the country of origin and shall include Basic seed potatoes. In the case of purchases of classified seed potatoes the Seller shall be held expressly to warrant that a Certificate or Report has been issued as stated. Save as hereinafter provided if seed potatoes are delivered from stocks for which a Certificate or Report has been issued by the Department or Ministry of Agriculture or other official control or classification services of the country of origin such Certificate or Report shall be conclusive evidence as to the purity and health of the seed potatoes.

5 TITLE

The implied undertakings as to title etc., set out in Section 12 of the Sale of Goods Act 1979 shall be express terms of this Contract.

6 PROTECTION

Notwithstanding the provisions of Condition 9 in relation to the passing of risk and property the Seller shall make reasonable arrangements for protecting the seed potatoes from damage by frost at the loading point and during transport.

7 TOLERANCES FOR DEFECTS, DISEASE AND SIZE

Without prejudice to any other Condition:

In respect of disease, pest, damage, defects and size the tolerances specified in the Seed Potatoes Regulations 1991 or any supervening legislation shall be allowed.

N.B.

- (1) Unless otherwise agreed the purchase is in respect of seed potatoes dressed from a representative sample of the crop "as grown".
- (2) Where the size of the seed potatoes is described by Riddles any potato which both with manipulation but without pressure being applied, passes through the gauge of the upper Riddle size quoted, and in any position can be retained on the gauge of the lower Riddle size quoted, shall be deemed to conform to size and to comply with its description.
- (3) The Seller must advise the Buyer forthwith of any chemical treatment which he has applied or which he intends to apply to the seed potatoes subsequent to harvesting.

8 DELIVERY

(1) Delivery is complete as soon as the Seller complies with the terms of delivery stated. The Buyer shall have the right to take delivery by instalments and in the event of his doing so each instalment shall stand as a separate Contract and the Buyer's failure to accept any instalment delivery shall not entitle the Seller to repudiate the Contract.

(2) Without prejudice to Condition 16 below, for a reasonable period, loading and delivery may be postponed by the Buyer and loading by the Seller, owing to adverse weather conditions.

(3) Any time or date for the despatch or delivery of the seed potatoes given or made by the Buyer shall be taken as an estimate made by the Buyer in good faith but it shall not be binding upon the Buyer as a term of the Contract.

(4) (i) The Seller shall not be liable for any damage to a consignment or part of a consignment occurring in transit however sustained or for loss from a package or container or for any shortfall in the number of containers supplied unless:

(a) The Buyer or his authorised representative advises the Seller at the time of arrival of the seed potatoes at their destination the quantity actually received, and

(b) The Seller is notified of the Buyer's claim within three days of arrival of the seed potatoes at their destination, time being of the essence.

(ii) The Seller shall not be liable for any short weight unless he is notified of the Buyer's claim within three days of arrival of the seed potatoes at their destination, time being of the essence.

PROVIDED THAT in the case of either (i) or (ii) above if the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the said period and such notice was given within a reasonable period the Seller shall not be entitled to rely upon the said time limit.

(5) For the purposes of these Conditions "destination" shall be the Buyer's premises or such other premises to which he may first direct delivery and a "working day" excludes Saturdays, Sundays, statutory and Bank holidays and holidays by Royal Proclamation. For the purposes of any time limit in these Conditions if the last day falls on a day other than a working day the limit shall be extended until the first working day following.

9 PASSING OF RISK AND PROPERTY

The property in seed potatoes and the risk of any loss or damage to or deterioration of the seed potatoes from whatever cause arising other than by the negligence of the Seller or his servants shall pass to the Buyer when the seed potatoes are:

- (a) first delivered to their destination; or
- (b) are collected by (i) the Buyer's transport or (ii) transport arranged by the Buyer (or by the Seller as the Buyer's agent).

10 GERMINATION AND CROP RESULT

WHEREAS IT IS IMPOSSIBLE TO ASCERTAIN THE GERMINATION AND CROP RESULT OF SEED POTATOES BEFORE SALE THE SELLER SHALL NOT BE RESPONSIBLE FOR ANY FAILURE OF THE SEED POTATOES (WHETHER TOTAL OR PARTIAL) TO GERMINATE AND/OR TO CROP EXCEPT WHERE SUCH FAILURE IS THE DIRECT RESULT OF NEGLIGENCE.

11 LIABILITY FOR PATENT DEFECTS - CLEARING OF GOODS

(1) This Condition is without prejudice to Conditions 7 and 10 and applies to any disease, pest, damage or defect whatsoever that is discoverable by reasonable inspection at the time of arrival of the seed potatoes at their destination or shortly thereafter ("Patent Defects"). THE SELLER SHALL BE DISCHARGED FROM ALL LIABILITY, AND THE BUYER SHALL HAVE NO CLAIM IN RESPECT OF PATENT DEFECTS UNLESS, TIME BEING OF THE ESSENCE FOR THE PURPOSE OF THIS CONDITION, NOTIFICATION OF REJECTION, CLAIM OR COMPLAINT IS MADE TO THE SELLER GIVING A STATEMENT OF THE GROUNDS FOR SUCH REJECTION, CLAIM OR COMPLAINT IMMEDIATELY UPON DISCOVERY AND IN ANY EVENT WITHIN FOURTEEN DAYS AFTER THE ARRIVAL OF THE SEED POTATOES AT THEIR DESTINATION AND THE SELLER IS GIVEN AN OPPORTUNITY TO INSPECT THE SEED POTATOES PROVIDED THAT:

If the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the appropriate period and notice was given within a reasonable period the Seller shall not be entitled to rely upon the time limits stipulated in this Condition and further, if the seed is delivered to another party and not taken into storage by the Buyer and the Buyer receives from said other party valid timeous notification of rejection, claim or complaint in respect of said seed, the Buyer shall be entitled to intimate rejection, claim or complaint to the Seller notwithstanding that the appropriate period for notification of complaint has elapsed, provided that the rejection, claim or complaint is notified to the Seller as soon as reasonably possible thereafter. WITHOUT PREJUDICE TO THE FOREGOING IT SHALL NOT BE COMPETENT TO THE BUYER TO REJECT, CLAIM OR COMPLAIN FOR ANY REASON UNLESS THE SEED POTATOES SHALL HAVE BEEN PROPERLY STORED DURING THE PERIOD AFTER THEIR ARRIVAL AT THEIR DESTINATION AND THE IDENTITY OF THE SEED POTATOES CANNOT BE CONTESTED.

12 LATENT DEFECTS

This Condition applies to any disease, pest, damage or defect whatsoever that is not discoverable by reasonable inspection at the time of the arrival of the seed potatoes at their destination or shortly thereafter ("Latent Defects").

- (1)
 - (a) The Seller by Condition 4 expressly warrants that a Certificate or Report has been issued as stated and
 - (b) The Buyer has relied on such Certificate or Report in entering into this Contract and
 - (c) This Contract is based on such Certificate or Report and the relevant control or classification system.
- (2) The Buyer's prices are based upon and reflect *inter alia* the limitation of liability contained in this Condition.

Except as specified in Conditions 10 and 17 hereof it is specially provided and agreed that in no other case whatsoever shall the Seller be liable for latent defects.

13 EXCLUSION OF LIABILITY

Save as aforesaid all express or implied conditions and warranties statutory or otherwise are hereby expressly excluded.

14 COMPENSATION AND DAMAGES

(1) It is specially provided and agreed that compensation and damages payable under any claim or claims arising out of this Contract under whatsoever pretext shall not in any circumstances amount in aggregate to more than the Contract price of the seed potatoes forming the subject of the claim or claims plus any justifiable expenses in respect of said purchases for which the Buyer is liable.

(2) Without prejudice to Condition 14 (1) above the Seller shall not be liable in any manner whatsoever for any consequential loss, damage or injury howsoever caused which may arise out of or in connection with the sale of seed potatoes under this Contract.

(3) Notwithstanding the provisions and limitations of Clause 14 (1) and (2) above, said provisions and limitations of said Clauses shall not apply in respect of failure by the Seller to implement delivery of seed potatoes.

15 PAYMENT

Payment shall be due within Twenty-eight days from the date on which delivery is completed and overdue Accounts will bear interest, on a calendar monthly basis, at a rate equivalent to the Bank of England Base Rate plus 4%.

16 FORCE MAJEURE

The Seller and the Buyer shall be relieved of all or any of his obligations under this Contract, to the extent that performance of such obligations is prevented, frustrated, impeded or delayed in consequence of any statute, regulation, rule, order or instruction of any Government, or other authority or any strike, lock-out or trade dispute (whether involving the Seller's or Buyer's employees or other parties) or civil commotion or any other cause, whether or not of a like or similar nature beyond the Seller's and Buyer's control.

17 ADMIXTURE

Notwithstanding any of the provisions of these Conditions it shall be competent for the Buyer to claim against the Seller in respect of any claim or damages awarded against the Buyer at the instance of a subsequent purchaser by any arbitration proceedings or by any Court of Law where such claim or damages is in respect of a lack of purity resulting from the presence of one or more other potato variety (admixture) in the seed potatoes which are the subject of this Contract, unless such admixture shall have been caused by fault or negligence on the part of the Buyer, provided that the Buyer has taken all reasonable steps in a diligent manner to have avoided any such award against him and that the Buyer has kept the Seller informed regarding the proceedings which resulted in the award being made against the Buyer.

18 CONSTRUCTION

These Conditions and the Contract shall be subject to and construed in accordance with Scottish Law.

19 DISPUTES

All disputes arising out of this Contract shall be settled by Arbitration according to the Arbitration Rules of the British Potato Trade Association in force as at the date of receipt by the Secretary of a Notice to Refer together with payment of the non-returnable registration fee, plus V.A.T. and a security deposit as prescribed in said Arbitration Rules. All Parties whether members of said Associations or not shall by their respectively accepting this Contract be deemed to have full knowledge of said Rules and to have agreed to be bound thereby. A copy of said Arbitration Rules can be obtained from the Secretary of either of said Association.

Copyright B.P.T.A. -July 2007.