

BRITISH POTATO TRADE ASSOCIATION
CONDITIONS OF SALE FOR SEED POTATOES
SCOTTISH LAW VERSION

1. INTERPRETATION:

In these Conditions

- 1.1. "Seller" means the member of the British Potato Trade Association (BPTA) selling the Seed Potatoes.
- 1.2. "Buyer" means the person, firm or company who accepts a quotation of the Seller for the sale of the Seed Potatoes and whose order for the Seed Potatoes is accepted by the Seller and who is buying the Seed Potatoes in the course of his business or who holds himself out as doing so.
- 1.3. "Seed Potatoes" means the classified seed potatoes, for which an official Certificate has been issued on the growing crop (and, where appropriate, confirmed by tuber virus indexing), sealed and labelled under the authority of the official control or classification service of the country of origin, which the Seller is to supply in accordance with these Conditions.
- 1.4. "Destination" means the point of delivery specified by the Buyer and agreed by the Seller.
- 1.5. "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and Seller.
- 1.6. "Contract" means the Contract for the supply of the Seed Potatoes.
- 1.7. "Writing" includes letter, facsimile and email transmission.
- 1.8. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.9. The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.10. "Working Day" excludes Saturdays, Sundays, statutory and Bank Holidays and holidays by Royal Proclamation. For the purpose 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.
- 1.11. "Certificate" means a certificate issued by the official control or classification service of the country of origin stating that the potatoes were classified as pre-basic, basic or certified seed potatoes in that country.

2. BASIS OF SALE

- 2.1. All prices quoted by the Seller are based upon these Conditions and reflect the limitations upon the Seller's liability which they contain. Should any Buyer wish to contract with the Seller otherwise than on the terms of such Conditions, special arrangements can be made prior to sale.
- 2.2. In the absence of any such special arrangements (which shall not bind the Seller unless made in Writing and signed on the Seller's behalf by a person duly authorised for that purpose) all quotations given and all contracts made by the Seller and any additions or amendments thereto shall be subject to these Conditions which supersede and shall be taken to override any terms or conditions proposed or stipulated by the Buyer.
- 2.3. Quotations are given subject to the Seed Potatoes being unsold on receipt of order.

3. SEED POTATOES

The Seller expressly warrants that a Certificate has been issued in respect of the Seed Potatoes. This Certificate shall be conclusive evidence as to the purity and health of Seed Potatoes.

4. TITLE

The implied terms as to title etc. set out in Section 12 of The Sale of Goods Act 1979 (as varied, where relevant, by the Sale and Supply of Goods Act 1994) shall be express terms of the Contract.

5. PROTECTION

Notwithstanding the provisions of Condition 8 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.

6. 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 2006 or any supervening legislation shall be allowed.

N.B. Where the size of the Seed Potatoes is described by riddles any Seed 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.

7. DELIVERY

7.1 Delivery terms

7.1.1 Delivery is complete as soon as the Seller complies with the terms of delivery stated. The Seller shall have the right to make delivery by instalments and in the event of his doing so each instalment shall stand as a separate contract and failure to make any instalment delivery shall not entitle the Buyer to repudiate the Contract.

7.1.2 In the event of the Seed Potatoes being sold for delivery within a specified period the Buyer must give the Seller loading instructions not less than three weeks before the end of the specified period, time being of the essence.

7.1.3 Without prejudice to Condition 15 below, for a reasonable period, loading and delivery may be postponed by the Seller and loading by the Buyer owing to adverse weather conditions.

7.1.4 Any time or date for the despatch or delivery of the Seed Potatoes given or made by the Seller shall be taken as an estimate made by the Seller in good faith, but the time and date may be varied if loading schedules are affected by adverse weather or other events beyond the Seller's control.

7.2 The Seller shall not be liable for any loss or damage, however sustained, to a consignment or part of a consignment or from a package or container, or for any shortfall in the number of containers supplied, if such loss or damage is caused in transit unless, time being of the essence:

(a) the Seller is notified of the Buyer's claim within three days of the arrival of the Seed Potatoes at the Destination otherwise than upon a consignment note or delivery note at the time of delivery;

(b) in regard to short weight, unless the Seller is notified of the Buyer's claim within 14 days of arrival of the Seed Potatoes at the Destination and the Seed Potatoes are still in the sealed containers.

PROVIDED THAT in the case of either 7.2 (a) or (b) 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.

8. PASSING OF RISK AND PROPERTY

8.1 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:

- 8.1.1 first delivered to their Destination; or
- 8.1.2 are collected by the Buyer's transport, or transport arranged by the Buyer or by the Seller as the Buyer's agent; or
- 8.1.3 upon the date when the Buyer has failed or refused to take delivery (or collect) if such be the case, and in any event whichever is the earlier.

- 8.2 Property in the Seed Potatoes shall remain with the Seller until payment in full of the purchase price of the Seed Potatoes whereupon it shall pass to the Buyer.
- 8.3 The Buyer hereby irrevocably grants to the Seller a licence (exercisable in the event of any breach by the Buyer of his obligations under any contract to which these Conditions apply or on the Buyer becoming bankrupt, going into liquidation or having a receiver appointed over any of his assets) to enter upon any premises on which there are situate the Seed Potatoes the property to which has remained with the Seller and to remove the same.

9. 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 CROP.

10. LIABILITY FOR PATENT DEFECTS.

- 10.1 This condition is without prejudice to Conditions 6 and 9 and applies to any disease, pest, damage or defect whatsoever that is discoverable by reasonable inspection at the time of the 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 :***

10.1.1. 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

10.1.2. THE SELLER IS GIVEN AN OPPORTUNITY TO INSPECT THE SEED POTATOES.

PROVIDED THAT 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. (EG THE SEALS ARE STILL INTACT)***

10.1.3. 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.

- 10.2 Unless otherwise agreed, the Seller shall replace any Seed Potatoes properly rejected by the Buyer in accordance with these Conditions.

- 10.3 Without prejudice to the rights of either the Seller or the Buyer under this condition, any Buyer who wishes to reject the Seed Potatoes shall, if requested to do so by the Seller, unload the Seed Potatoes and store them properly either overnight or for such longer period as may reasonably be requested by the Seller pending resolution of the parties rights pursuant to these Conditions.

11. LATENT DEFECTS

- 11.1 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 nor within fourteen days thereof ("Latent Defects").

- 11.2 Because the Seller has relied on the Certificate in entering into the Contract and the warranty given in Condition 3, the Contract is based on such Certificate and the relevant control or classification system and the Seller's prices are based upon and reflect inter alia the limitation of liability contained in this Condition.

IT IS SPECIALLY PROVIDED AND AGREED THAT IN NO CASE WHATSOEVER SHALL THE SELLER BE LIABLE FOR LATENT DEFECTS.

12. EXCLUSION OF LIABILITY

- 12.1 Save as stated in these Conditions all express or implied conditions and warranties statutory or otherwise are hereby expressly excluded.

- 12.2 Nothing in these Conditions shall affect any liability which the Seller may incur for death or personal injury resulting from negligence or any other liability which may not be limited or excluded at law.

13. COMPENSATION AND DAMAGES.

- 13.1 It is specially provided and agreed that compensation and damages payable under any claim or claims arising out of the Contract 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.

- 13.2 Without prejudice to the 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 the Seed Potatoes.

14. PAYMENT

The Seller reserves the right to require payment at any time before or after delivery to the Destination and to raise interest on overdue accounts. The Seller's payment and credit terms are stated in the Contract.

15. FORCE MAJEURE

The Seller and the Buyer shall be relieved of all or any of his obligations under the 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 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.

16. INSOLVENCY OF THE BUYER

- 16.1 This condition applies if ;

16.1.1 the Buyer makes any voluntary arrangement with its creditors or being an individual or firm becomes bankrupt or being a company becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

16.1.2 an encumbrancer takes possession, or a receiver is appointed of any property or assets of the Buyer; or

16.1.3 the Buyer ceases or threatens to cease to carry on business; or

16.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 16.2 If this Condition applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer and if the Seed Potatoes have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

17. CONSTRUCTION

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

18. DISPUTES

Any dispute arising out of the 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 the request for Arbitration referred to below, and all parties, whether members of such Association or not, shall by their respectively entering into the Contract, be deemed to have full knowledge of such rules and to have elected to be bound thereby.

A request for Arbitration must be addressed to the Secretary WITHIN 12 MONTHS AFTER RECEIPT BY ONE PARTY OF NOTICE IN WRITING from the other party of the basis of the claim or dispute.

© BPTA 1st January 2007

NOTE. Ownership of and copyright in these terms and conditions of sale is, and remains, vested in the BPTA. Reproduction and use in any material form of these conditions of sale by non-members of the BPTA whether in whole, or in part (including photocopying or storage in any medium whether mechanical or electronic) is prohibited, except with the prior permission in Writing of the BPTA.