

CONDITIONS OF SALE

1. PARTIES

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

2. BASIS AND APPLICATION

- (1) All prices quoted by the Seller are based upon these Conditions of Sale 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 of Sale special arrangements can be made prior to sale and revised price quoted by the Seller.
- (2) In the absence of any such special arrangement (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 of Sale which supersede and shall be taken to override any terms or conditions proposed or stipulated by the Buyer.

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.
- (2) Nothing in these Conditions shall affect any liability which the Seller may incur for death or personal injury resulting from negligence.

4. CERTIFIED SEED POTATOES

- (1) In these Conditions of Sale "certified seed potatoes" shall mean seed potatoes from stocks for which a Certificate or Report has been issued by the Department or Ministry of Agriculture or other official control or certification services of the country of origin and shall include basic seed potatoes. In the case of sales of certified seed potatoes the Seller expressly warrants that a Certificate or Report has been issued as stated. Save as is 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 certification services of the country of origin such Certificate or Report shall be conclusive evidence as to the purity and health of the seed potatoes.
- (2) Uncertified seed potatoes will only be sold if their sale is permitted. Uncertified seed potatoes shall be held to conform to their description if 97% thereof are true to variety.
- (3) Reference in these Conditions of Sale to seed potatoes shall include both certified and uncertified seed potatoes unless the context otherwise admits.

5. TITLE

The implied undertakings as to title etc. set out in Section 12 of The Sale of Goods Act 1893 shall be express terms of this Contract.

6. PROTECTION

The Seller shall make reasonable arrangements for protecting the seed potatoes from damage by frost at the loading point and during transport. Subject to the fulfilment of these arrangements for protection however and in the event of the Buyer making his own arrangements for transport the Seller shall not be responsible for frost damage at the loading point after three days from the day appointed for uplifting the seed potatoes.

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 1978 or any supervening legislation shall be allowed. (For the avoidance of doubt the said tolerances shall be allowed in respect of uncertified seed).

N.B. 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.

8. DELIVERY

- (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.
- (2) In the event of Seed potatoes being sold for delivery within a specified period the Buyer must give the Seller loading instructions not less than two weeks before the commencement of the specified period, time being of the essence.
- (3) Without prejudice to Condition 16 below delivery may be postponed owing to adverse weather conditions.
- (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 it shall not be binding upon the Seller either as a term of the Contract or otherwise howsoever.
- (5) The Seller shall not be liable for any short weight unless:
 - (a) A qualified signature is given by the Buyer acknowledging the quantity actually received and
 - (b) The Seller is notified of the Buyer's claim within three days of receipt of the seed potatoes time being of the essence.

PROVIDED THAT 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.

9. PASSING OF RISK AND PROPERTY

- (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 delivered to the Buyer's premises or are collected by the Buyer's transport or upon the date when the Buyer has failed or refused to take delivery (or collect) if such be the case, whichever is the earlier.
- (2) Property in the seed potatoes shall pass to the Buyer with the risk unless the Buyer refuses to accept delivery or fails to collect; in either case the property in the seed potatoes shall remain with the Seller.

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 CROP.

11. PATENT DEFECTS

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 the arrival of the seed potato

/at their...

at their destination. ("Patents 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 WITHIN THREE DAYS (WITHIN TEN DAYS IN THE CASE OF REJECTION, CLAIM OR COMPLAINT SPECIFICALLY IN RESPECT OF SKIN SPOT, GANGRENE OR DRY ROT) AFTER THE ARRIVAL OF THE SEED POTATOES AT THEIR DESTINATION.

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 by this Condition. 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. The Seller shall replace any seed potatoes properly rejected by the Buyer unless otherwise agreed.

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 ("Latent Defects").

WHEREAS:-

- (1) In the case of sales of certified seed potatoes:-
 - (a) The Seller by Condition 4 (†) expressly warrants that a Certificate or Report has been issued as stated and
 - (b) The Seller 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 certification system.
- (2) The Seller's prices are based upon and reflect inter alia the limitation of liability contained in this Condition.
- (3) The Buyer should, if he so wishes, insure against the risk of Latent Defects.

IT IS SPECIALLY PROVIDED AND AGREED THAT IN NO 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.
- (2) Without prejudice to Clause 4(A) 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.

15. PAYMENT

The Seller reserves the right to require payment at any time before or after delivery and to raise interest on overdue accounts.

16. FORCE MAJEURE

The Seller 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,...

statute, regulation, rule, order or instruction of any Government, Council 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 control.

17. CONSTRUCTION

These Conditions in this Contract shall be subject to and construed in accordance with English Law.

18 DISPUTES

Any dispute arising out of this Contract shall be settled by arbitration according to the Rules of the National Association of Seed Potato Merchants as amended, 1966, and all parties, whether members of such Association or not, shall by their respectively signing or accepting this Contract be deemed to have full knowledge of such rules and to have elected to be bound thereby.

NOTE: The Buyer's attention is particularly drawn to Condition 10 and 12 for insurance purposes.

C. N.A.S.P.M. 1978