

Terms & conditions of sale

For the Supply of Fertiliser/Seed

By Openfield Agriculture Limited

Company number 3548572

Registered office Honey Pot Lane

Colsterworth Grantham Lincolnshire NG33 5LY

1. Definitions

In these Terms and Conditions of business the following meanings shall apply:

"AIC Fertiliser Conditions"	the contract terms for the sale and purchase of fertiliser published by the Agricultural Industries Confederation at the time of Order which can be read at www.agindustries.org.uk
"AIC Seed Conditions"	the contract terms for the sale and purchase of seed published by the Agricultural Industries Confederation at the time of Order which can be read at www.agindustries.org.uk
"the Company"	shall mean Openfield Agriculture Limited Company number 3548572 whose registered office is at Honey Pot Lane Colsterworth, Grantham, Lincolnshire, NG33 5LY
"Conditions"	the Standard Terms set out in this document together with and subject to (a) the Seed Conditions and the AIC Seed Conditions where the Goods are seed and (b) the AIC Fertiliser Conditions where the Goods are fertiliser but always subject to condition 17
"Confirmation of Order"	a written confirmation of the Customer's order sent by the Company to the Customer after the Customer has placed an Order but before delivery.
"Contract"	any contract between the Company and the Customer for the sale and purchase of Goods, incorporating these conditions
"the Customer"	shall mean any person or persons, firm or company who offers to buy, buys or agrees to buy Goods from, the Company
"Delivery Point"	the place where delivery of the Goods is to take place as agreed and noticed on the Confirmation of Order
"Delivery Date"	the date for delivery specified pursuant to the provisions of condition 3.2
"Delivery Period"	the period within which the Company expects to deliver the Goods to the Customer as advised to the Customer by the Company prior to the Order.
"Goods"	shall mean any item of whatsoever nature the Company is to supply to the Customer
"Order"	an order for Goods placed by a Customer
"Price"	means the price agreed at the time of Order
"Provisional Delivery Date"	The provisional date for delivery given by the Company to the Customer on the Confirmation of Order and which will be within the Delivery Period
"Quotation"	an estimate of the Price
"Seed Conditions"	conditions which apply to Goods which are seeds and which are set out in the Schedule
"Standard Terms"	the Conditions other than the Seed Conditions, the AIC Seed Conditions and the AIC Fertiliser Conditions
"Website"	the Company website at www.openfield.co.uk

2. Conditions Applicable

- 2.1. Subject to any variation under condition 2.3 the Conditions shall apply to and govern all Contracts to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any Order, confirmation of order, specification or other document).
 - 2.2. No terms or conditions endorsed on, delivered with or contained in any Customer's confirmation of order, specification or other document shall form part of the Contract.
 - 2.3. The Conditions apply to all the Company's sales and any variation to the Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Farm Business Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract, Quotation or the Conditions. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
 - 2.4. Each Order or acceptance of a Quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these Conditions.
 - 2.5. No Order placed by the Customer shall be deemed to be accepted by the Company until actually accepted by the Company.
 - 2.6. The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.
 - 2.7. Any Quotation is given on the basis that no Contract shall come into existence until the Company accepts an Order. Any Quotation is valid for the period described upon it provided that the Company has not previously withdrawn it and during which time the Customer may place an Order.
 - 2.8. The exercise by the Company of any right pursuant to the Conditions shall be without prejudice to any other right available to it whether hereunder or under general law.
 - 2.9. The Company reserves the right to require trade references and undertake credit searches before entering into any Contract.
 - 2.10. Unless otherwise specifically stated, all prices quoted by the Company are exclusive of Value Added Tax, which shall be due at the rate in force on the date of the Company's invoice to the Customer or any other appropriate tax point.
 - 2.11. After an Order has been placed the Company will send a Confirmation of Order to the Customer.
- #### 3. Delivery
- 3.1. Any Provisional Delivery Date and time specified by the Company are approximate only. Date and time for delivery is not and shall not be deemed to be of the essence of the Contract. The Company will use reasonable endeavours to revise the Provisional Delivery Date from time to time and to enable delivery within the Delivery Period. The Customer shall make all arrangements necessary to take delivery of Goods whenever they are tendered for delivery. Delivery will be made at the Delivery Point unless any other location is agreed by the Company.
 - 3.2. The Customer shall take delivery of the Goods on the Delivery Date which shall be a date provided by the Company or the Company's supplier or haulier to the Customer on at least 2 prior days notice.
 - 3.3. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery (being the Delivery

- Date specified pursuant to condition 3.2), or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- 3.3.1. risk in the Goods shall pass to the Customer;
 - 3.3.2. the Goods shall be deemed to have been delivered; and
 - 3.3.3. the Company may store the Goods until actual delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 3.4. If the Delivery Point is not at the Company's Premises the Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods and shall ensure that the Delivery Point and storage facilities comply with all statutory requirements and any relevant codes of practice.
 - 3.5. If the Company delivers to the Customer a quantity of Goods of up to 3% more or less than the quantity ordered, the Customer shall not be entitled to object to or reject the Goods delivered or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
 - 3.6. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
 - 3.7. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- #### 4. Non-delivery
- 4.1. The quantity of any consignment of Goods as recorded by the Company or its suppliers on dispatch from the Company's place of business or that of its suppliers shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
 - 4.2. The Company shall not be liable for any non-delivery of the correct quantity of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within one working day of the date when the Goods would in the ordinary course of events have been received.
 - 4.3. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- #### 5. Cancellation and Variation
- No cancellation, suspension or variation by the Customer of any order accepted by the Company shall be valid unless agreed by the Company in writing and such agreement may only be given on terms which compensate the Company for any loss, costs, damages, charges and expenses thereby incurred by the Company, such compensation to be decided by the Company at its absolute discretion.
- #### 6. The Price and Payment
- 6.1. Payment of the Price and any Delivery Charges and VAT shall be due within 28 days of the Delivery Date of the Goods unless a different time for payment is specifically agreed between the parties in writing. Time for payment shall be of the essence and payment must be made without set-off, counter-claim or credit unless the same is for a liquidated amount which has been agreed in writing by the Company. Payment shall be made in pounds sterling.
 - 6.2. All other sums due to the

- Company from the Customer are payable on demand.
- 6.3. Payment shall be made by the Customer to the Company at Honey Pot Lane, Colsterworth, Grantham, Lincolnshire, NG33 5LY or by bank transfer to the Company's Account if specified by the Company.
 - 6.4. Where Goods are delivered in instalments the Company may invoice each instalment, separately and the Customer, shall pay such invoices in accordance with the Conditions.
 - 6.5. If the Customer is in default in paying any sum as and when it becomes due, the Company shall have the right to suspend all further deliveries until the default is made good and/or to cancel the contract so far as any Goods remain to be delivered thereunder. Further, if the Customer is in default in paying any sum whatsoever all sums due from the Customer to the Company shall become immediately payable upon demand. The Finance department are authorised to contra purchase ledger balances against sales ledger balances should no payment be received.
 - 6.6. In the event that the Customer fails to pay any monies by the due date, the Company shall be entitled to charge interest on the outstanding monies both before and after Judgment from the due date to the date of actual payment at a rate from time to time in force under the Late Payment of Commercial Debts (Interest) Act 1998. In addition, the Company reserves the right at its absolute discretion to re-charge preferential discounts previously agreed on orders, should payment not be made by the due date. The Customer shall also indemnify the Company against expenditure on all costs of recovery including, without limitation, legal fees, costs and disbursements reasonably incurred. Any banking charges incurred by the company in respect of dishonoured cheques will be payable by the Customer.
 - 6.7. The Company shall have a general lien on all and any Goods for the time being under its control belonging to the Customer for all sums due and for all claims of every description by the Company against the Customer in respect of any order or account and if any sum or sums remain owing to the Company fourteen days after the Customer has been given notice in writing of the exercise of such lien the Company shall have the power to sell the whole or any part of such Goods to discharge the same sums and claims and all expenses incurred in connection with the sale of the Goods and any balance of the proceeds of such sale shall be paid by the Company to the Customer.
 - 6.8. The Customer shall not in any event, until all monies due have been paid to the Company, be entitled to pledge, or in any way charge by way of security for any reason, any of the Goods which remain the property of the Company, but if the Customer does so all monies due to the Company at any time under the Contract shall become immediately due and payable without prejudice to any other right or remedy of the Company.
 - 6.9. No payment shall be deemed to have been received until the Company has received cleared funds.
 - 6.10. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- #### 7. Title and Risk
- 7.1. The risk in the Goods shall pass to the Customer upon the Delivery Date so that the Customer is responsible for all loss, damage or deterioration of the Goods or a part thereof with effect from and including the

- Delivery Date. Where the Goods are delivered by a carrier any claims for loss or claims in transit must be made by the Customer against the carrier in accordance with any terms and conditions of business of the carrier where the carrier is appointed by the Company.
- 7.2. Title of the Goods or any part thereof shall only pass to the Customer when payment in full for all Goods whatsoever supplied and all services rendered at any time by the Company or any other payment due under the Contract has been made.
 - 7.3. The Customer shall permit so far as it is able and shall use its best endeavours to assist any officer, employee, representative or agent of the Company to enter onto any premises where the Goods may from time to time be situated and to repossess the Goods at any time prior to title passing to the Customer and until such time as title passes the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall maintain the Goods in satisfactory condition in the original packaging and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.
 - 7.4. The Customer shall store the Goods separately from any other products and in such a way that they can be readily identified as being the products of the Company and shall immediately and at its own cost return the Goods to the Company should it so request
- #### 8. Insolvency
- 8.1. If any distress or execution shall be levied on the Customer's property or assets or any part thereof, or if the Customer shall make or offer to make any arrangement or composition with its creditors generally or if the Customer:-
 - (a) being an individual commits any act of bankruptcy or if any Petition or Receiving Order in Bankruptcy shall be presented or made against him; or
 - (b) being a partnership, if the said partnership is dissolved for whatsoever reason or if any partner commits any act of bankruptcy or if any Petition or Receiving Order in Bankruptcy shall be presented or made against any partner or the partnership; or
 - (c) being a limited company, if proceedings are commenced for the liquidation of the Customer or if a meeting of creditors is called or if a resolution is passed for the voluntary winding up of the Customer (other than a members voluntary winding up or the purpose of amalgamation or reconstruction only) or the appointment of an Administrator or an Administrator's Receiver or a Receiver is appointed of all or any other assets of the Customer, or the Customer ceases, or threatens to cease, to carry on business or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer or the Customer suffers or allows any execution whether legal or equitable to be levied on its property or is unable to pay its debts or ceases to trade.
 then the Company shall have the right forthwith to determine all subsisting Contracts whether remaining to be performed in whole or in part by serving written notice of such determination on the Customer, and all monies due to the Company shall become immediately due and payable.
 - 8.2. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
 - 8.3. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to recover them.

- 8.4. On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in conditions 7 and 8 shall remain in effect.
- 9. Warranty and Quality**
- 9.1. Subject as expressly provided in these Conditions and except where Goods are sold or services provided to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permissible by law.
- 9.2. The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979 as amended and;
- (b) be reasonably fit for any particular purpose for which the Goods are being bought if the Customer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company.
- 10. Indemnities**
- 10.1. To the fullest extent permissible the Customer will indemnify the Company against all damages, penalties, fines, costs and expenses to which the Company may be liable in respect of any claim or action by any third party arising directly or indirectly from the Customer's use of the Goods or by any act or omission whatsoever by the Customer or any person responsible to the Customer.
- 10.2. The Company gives no indemnity to the Customer against any action for an alleged infringement of patents, trademarks, trade names, registered designs, design copyright or any other intellectual property right relating to the Goods.
- 11. Restriction of Liability**
- 11.1. The Company shall not in any event be liable for indirect or consequential loss or damage, being loss or damage which does not directly and naturally flow from the supply of Goods or materials, including without limitation loss of profits, of use, overhead costs, collateral damage or of contracts arising out of the supply or failure of supply of Goods or services by the Company (other than liability for death or personal injury resulting from the negligence of the Company) and whether arising from breach of contract, negligence or for any other liability howsoever arising, whether by statute or otherwise.
- 11.2. In all other cases (being cases of direct and natural losses or damage) save for cases of alleged delay in delivery as dealt with below it is specifically provided and agreed that the Company's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price or other sums payable by the Customer pursuant to the Contract.
- 11.3. No liability for direct losses shall attach to the Company unless details of such losses are notified to the Company in writing within 7 days of the date of delivery of the Goods, or the date of the event giving rise to such loss if it is not apparent upon the date of delivery. In cases of alleged non-delivery, short delivery or defective delivery claims must be notified to the Company within one working day of the Delivery Date.
- 11.4. The Company shall not in any event be liable for either direct or indirect or consequential loss or damage (as defined above) which arises from delay in delivering the Goods to the Customer and whether arising from breach of contract, negligence or in any other manner, whether by statute or otherwise.
- 11.5. The Company shall not be liable for a breach of any of the warranties in condition 9.2 or for any claim arising out of any defect in the quality or suitability of the Goods or any services unless:
- 11.5.1. the Customer gives written notice of the defect to the Company, as provided in condition 11.3; and
- 11.5.2. the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 11.6. The Company shall not be liable for a breach of the nature referred to in condition 11.5 if:
- 11.6.1. the Customer makes any further use of such Goods after giving such notice; or
- 11.6.2. the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 11.6.3. the Customer alters such Goods without the written consent of the Company.
- 11.7. Subject to the provisions of this condition 11 if any of the Goods do not conform with any of the warranties in condition 9.2 the Company shall at its option replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 11.8. If the Company complies with condition 11.5 it shall have no further liability for a breach of the nature referred to in condition 11.5 in respect of such Goods.
- 11.9. Nothing in these conditions excludes or limits the liability of the Company:
- 11.9.1. for death or personal injury caused by the Company's negligence; or
- 11.9.2. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 11.9.3. for fraud or fraudulent misrepresentation.
- 12. Force majeure**
- 12.1. In these Conditions "force majeure" shall mean any circumstances preventing either party from performing all or any of its obligations (except for the Customer's obligation to make payment of sums due in accordance with condition 6 above) which arises from or is attributable to acts, omissions, or accidents beyond the reasonable control of the party so prevented, including strikes, lock-outs, trade dispute or other disturbance, act of God, war, riot, fire, flood, difficulty in obtaining workmen, fuel, materials or transport, government restrictions or the exercise of government authority, whole or partial failure of equipment or the Company's suppliers.
- 12.2. If either party is prevented or delayed in the performance of any of its obligations under this contract by force majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances, and shall, subject to service of such notice and to condition 11.4 have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all its reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 12.3. If either party is prevented as a result of force majeure from performance of its obligations for a continuous period in excess of three months either party may terminate this contract forthwith, on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 12.4. The party claiming to be prevented or delayed in the performance of any of its obligations under this contract by reason of force majeure shall use all reasonable endeavours (without hereby being obliged to incur any expenditure) to bring the force majeure event to a close, or find a solution by which the Contract may be performed despite the continuation of the force majeure event.
- 13. General**
- 13.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6. This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 14. Communications**
- 14.1. All notices to be given by one party to another pursuant to a Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- 14.1.1. (in case of notices to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- 14.1.2. (in the case of the notices to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in the Confirmation of Order or any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 14.2. Notices shall be deemed to have been received:
- 14.2.1. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 14.2.2. if delivered by hand prior to 4.00pm, on the day of delivery or if after 4.00pm on the next working day; or
- 14.2.3. if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3. Communications addressed to the Company shall be marked for the attention of the Farm Business Director
- 15. Data Protection**
- 15.1. The information the Customer provides will be used by the Company primarily to provide the Goods to the Customer. This will include updating and enhancing the Customer records, analysis to help the Company manage its business, statutory returns and legal regulatory compliance.
- 15.2. The Customer's information will be kept confidential and secure. The Customer's use of this information is subject to the Customer's instructions and the General Data protection Regulation (under which the Company is a Data Controller).
- 15.3. Occasionally the Company would like to send the customer information about additional products and/or services offered. If the customer does not wish to receive such information, then please write to our Data Protection Officer at our Head Office.
- 15.4. The Company may make a search of a credit reference agency, which will keep a record of that search. The Company may also make enquiries about the principal directors of the Customer.
- 15.5. The Company will monitor and record information relating to the Customer's trade credit performance and such records may be made available to credit reference agencies and other organisations who will share that information with other businesses to assess applications for credit.
- 15.6. For further information as to how the Company protects and respects the Customer's privacy and ensures security of personal data, we refer you to the Company's 'Privacy Policy' a full copy is available on the Company's website at www.openfield.co.uk.
- 16. Headings**
- The paragraph headings in these terms and Conditions are for identification purposes only and do not form part of these Conditions.
- 17. AIC Seed Conditions and AIC Fertiliser Conditions and Seed Conditions**
- 17.1. If and insofar as there is any conflict or ambiguity as between the AIC Seed Conditions or the AIC Fertiliser Conditions and the Standard Terms, the Standard Terms shall prevail.
- 17.2. Where a Contract relates to Goods which are Seeds then in the event of any conflict or ambiguity as between the Seed Conditions and the Standard Terms, the Seed Conditions shall prevail.
- 18. Guidance and Warnings**
- 18.1. The Customer will be responsible for having read and understood all information guidance and warnings (which are given without prejudice to the remainder of the Conditions which shall take precedence) which:
- 18.1.1 are set out or referred to on the web-site of any manufacturer of the Goods where the appropriate link is given on the Web-Site(s) set out below.
- 18.1.2 are set out in the Web-Site at www.openfield.co.uk.
- 18.1.3 are published by any trade association, regulatory or government body.
- 18.1.4 are contained in any statute, statutory instrument, by law or any other form of legislation or regulation.
- Important web-site links are:**
- www.agindustries.org.uk
- www.growthow.co.uk
- SCHEDULE**
- Seed Conditions**
1. If the Company has accepted in writing an Order from the Customer relating to the supply of seeds then the following additional conditions shall apply. In this Schedule the seeds supplied are referred to as Goods.
2. If by reason of events beyond the Company's reasonable control (including but not limited to the effects of pest disease or un-climatic conditions the Company is prevented from delivering all or part of the Goods then:
- 2.1 in the case of shortage of stocks the Company shall be entitled to apportion its existing stocks between its Customers at its sole discretion and the amount apportioned to the Customer shall be deemed to be the correct quantity and the Customer shall pay for the actual quantity delivered; and
- 2.2 in the case of no stocks being available not less than 7 days prior to the Provisional Delivery Date the Company shall be entitled to cancel the Contract without any liability whatsoever. In these circumstances the Company will give as much notice to the Customer as is reasonably practicable but the Company shall have no liability if it fails to give such notice.
3. Where Goods are specifically treated or tested under an agreement with the Customer, the warranty in condition 9.2 does not apply and the Company only warrants that the requested treatment or testing has been undertaken. Seed sold by the Company is guaranteed to comply at the time of delivery with the UK Seeds Regulations in force at the time of delivery.
4. The Company shall have no liability whatsoever relating to the sale and purchase of the Goods or otherwise whether in contract, tort or otherwise, in connection with a claim for latent defects in the Goods unless such claim is made within 14 days of the defect becoming apparent and is accompanied by evidence of the identity of the Goods and the cultivation procedures adopted in respect of them.
5. In the event of any seeds sold not complying with the express terms of the Contract, or any seeds of the correct species and type proving defective in varietal purity, the Company will at its option replace the defective seeds free of charge to the Customer or will refund all payments made by the Customer in respect of the defective seed and this shall be the limit of the Company's obligation. All liability is excluded for any loss or damage arising from the use of any seed supplied and for any consequential loss or damage arising out of such use or any failure in the performance or any defect in any seeds supplied and for any other loss or damage including, without prejudice to the totality hereof, any failure total or partial of the resultant crop since such failure can depend on so many natural and other factors beyond the Company's control, save for, at the Company's option, liability for such replacement or refund as aforesaid. In accordance with the established custom of the seed trade, any express or implied conditions, statement or warranty, statutory or otherwise, not stated in the Conditions is also excluded. The price of any seeds sold or offered for sale is based upon the foregoing limitations upon the Company's liability. The price of such seeds would be much greater if a more extensive liability were required to be undertaken. In accepting the seed upon these conditions, the Customer acknowledges that the limitations of the Company's liability are fair and reasonable.
6. The price of any variety which is the subject of a grant of plant breeders' rights under the Plant Varieties and Seeds Act 1964, (as amended), will be adjusted to include the cost of any royalty to the owner of the rights. If, in the case of a variety which is already the subject of plant breeders' rights there is any change in the rate of royalty payable to the owner of the rights, the price will be adjusted accordingly.
- Where Goods are sold as grown on a private royalty arrangement royalties will be collected by the British Society of Plant Breeders (BSPB) and the Customer undertakes to pay such royalties as are due. For the express purpose of monitoring, verifying and enforcing plant breeders' rights, the Company has the right to be provided with the name and address of the grower of the protected variety which is the subject of sale.
7. Where the Company directly represents the holder of the rights of a protected variety, then the Company reserves its rights to collect royalties through BSPB based on the traditional tonnage based system or through an area payment operated under the Company's Royalty Area Collection Scheme (RAC). Where a variety is sold under the Company's RAC the specific details of the terms and obligations will be provided prior to its acceptance of an order and are deemed to be additional to these Conditions.
8. No complaint under the terms of these Conditions can be considered unless clear written proof can be given that the seed grown and alleged to have performed unsatisfactorily was in fact the seed supplied and that it was sown on suitably prepared ground, treated carefully and correctly throughout and subject only to such conditions as were likely to produce a favourable crop. The burden of proof shall be on the Customer to establish any defect in the seed supplied.
9. Where at the Customer's request any treatment whether chemical or otherwise is supplied to the seed, the Company's liability shall be limited to such treatment being carried out in the correct manner and/or in accordance with the instructions given by the manufacturer of the chemical in question and the Company accepts no responsibility whatsoever for the effectiveness of such treatment or any damage direct or consequential which may result therefrom.

Openfield™

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