

General Terms and Conditions of Sale and Delivery



Sale and Delivery Terms and Conditions

1. Top Seeds International Ltd., an Israeli company having its principle place of business at Moshav Sharona, Lower Galilee, Israel 1523200 is a seed company that owns, develops and produces seeds and plant material that it subsequently sells to seed growers ("**Top Seeds**" or "**Seller**").
2. These General Terms and Conditions shall govern all offers and agreements made between the Seller and a potential buyer ("**Buyer**"), except in so far as has been expressly otherwise provided in writing and agreed to by the Parties. Seller and Buyer may hereinafter be referred to individually as a "Party" and collectively as the "**Parties**"
3. **Definitions:**
 - a. "**Product**" or "**Products**" shall mean the seeds, plant material and/or other goods and/or services provided by Top Seeds as agreed to between the Parties.
 - b. "**Processing**" shall mean the treatment of the Product, but not exclusively, for the purpose of improving sowability, emergence, and/or prevention and/or spreading of pests and/or diseases.
4. **Offers and Prices**
 - a. Offers. The offers made by the Seller are without commitment and can be withdrawn by Seller at any time. Verbal offers automatically expire in case not confirmed by the Buyer in writing within 7 days. Written offers automatically expire in case not confirmed by the Buyer in writing within 30 days.
 - b. Prices. All prices specified in an offer are exclusive of VAT. The Seller reserves the right to change the prices of any Product by issuing a new price listing. Each new price listing will invalidate the preceding one with regard to all orders placed after the issue of the new price listing.
 - c. Acceptance. All offers can only be accepted in writing, unless verbal acceptance is expressly permitted by the Seller. The Seller may withdraw the offer within three (3) business days after the receipt of Buyer's acceptance (verbal or written), in the case of such withdrawal no agreement has been made between the parties
5. **Harvesting and Processing Reserve**
 - a. All deliveries made by the Seller to the Buyer are subject to the customary seed trade harvesting and processing reserve. If the Seller invokes the harvesting or processing reserve, the Seller is not obliged to supply, but will, if possible, try to supply pro rata to the quantity ordered or reasonable equivalent alternatives.
 - b. The Buyer is not entitled to any remedy including damages if the Seller invokes the harvesting or processing reserve.
6. **Ordering and Delivery**
 - a. The Seller shall use reasonable commercial efforts to fulfill its obligations to deliver the Product to the Buyer. Seller's obligation to deliver the Product shall allow for delivery with a minor difference in size, packaging, number or weight. Such minor differences in delivery shall not constitute a breach of the Seller's obligations to deliver. If the quantity ordered in any order differs from the standard quantity applied by the Seller or a multiple thereof, the Seller is permitted to deliver the next highest quantity. The Seller is permitted to make split-deliveries of the Products sold. If the Products is split-delivered, the Seller has the right to invoice each delivery separately.
 - b. The Seller undertakes to deliver within a reasonable delivery period following the conclusion of the purchase agreement. In the event of late delivery, the Buyer must provide the Seller with written notice of default and allow Seller a reasonable period to remedy the late delivery.
 - c. Delivery will be ex-works (EXW) of the Seller according the Incoterms 2010. Transport, documentation and transport insurance may be arranged by Seller upon request of the Buyer at Buyer's cost and expense.
 - d. For orders with a value of less than EURO 200, the Seller reserves the right to charge an administrative and order handling fee.

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- e. The Buyer must specify in writing, upon first request of the Seller, what data, specifications and documents are required pursuant to the regulations of the country in which the delivery is made, such as those relating to invoices, phytosanitary requirements, international certificates and other import documents or import statements. The Buyer's will defend, indemnify and hold Seller harmless from and against any and all claims, losses, suits, liabilities, damages, legal actions, penalty fees, and other costs (including attorney's expenses) incurred by Seller as a result of Buyer's failure or alleged failure to comply with this Section 6(e).

7. Suspension

- a. If the Buyer fails to fulfil one or more of its obligations under these Terms, the Seller's obligations will automatically and immediately be suspended until the Buyer has paid all amounts due and payable by Buyer (including payment of any out-of-court costs). In the event that Buyer has failed to fulfill one or more of its obligations under these Terms, the Seller may demand full payment and/or sufficient security from the Buyer, for instance in the form of a bank guarantee to be issued by a reputable banking institution, with regard to the performance by the Buyer.
- b. If the Seller has reason to believe that the Buyer will not or cannot fulfill its obligations under these Terms, The Seller is entitled to demand full payment and/or sufficient security for payment by the Buyer before the Seller commences performance.

8. Retention of Title

- a. The Products constitute property of the Seller; title shall pass to the Buyer at the moment the Buyer has paid the purchase price in full. The Seller's retention of title also applies to any claims that the Seller may have or acquire against the Buyer due to the Buyer's failure to fulfil one of his obligations towards the Seller.
- b. Products delivered by the Seller, to which the retention of title pursuant to Section 8(a) applies, may be resold or used only in the normal course of business. In the event Buyer resells the Product, Buyer is obliged to demand a retention of title of the Products.
- c. The Buyer is not permitted to pledge the Products or to create any other right with regard to the Products.

9. Payment

- a. The Buyer shall render payment in full within 30 days of the invoice date, unless otherwise agreed by the Parties in writing. If the Buyer failed to render payment within 30 days of the invoice date, the Buyer will be in default and will owe interest at a rate of 1.5% (one and a half percent) a month on the outstanding amount from the date of default.
- b. If the Buyer is liquidated, declared bankrupt or granted a suspension of payments, the Buyer's payment obligations will fall due immediately and the Seller will be entitled to suspend any further performance of the agreement between the Parties or to dissolve such agreement, without prejudice to the Seller's right to claim damages.
- c. The Parties may agree in writing to a payment instalments schedule. In the event the Buyer fails to render payment according to such schedule, the entire remaining amount will fall due immediately without notice of default. The interest provision of Section 9(a) shall apply accordingly.

10. Collection Costs

- a. If the Buyer fails to perform one or more of his payment obligations, all the costs of obtaining payment in and out of court will be for the Buyer's account.

11. Use and Guarantee

- a. The Seller shall use commercially reasonable efforts to deliver Product that complies with the relevant Product specifications as are agreed to between the Parties. The Seller shall inform the Buyer in writing if the Products to be delivered do not comply with the Product specifications. The Seller does not guarantee that the performances rendered will comply with the purpose for which the Products will be used by the Buyer.
- b. The Seller will provide information on the quality of the Product. Such information will be exclusively based upon reproducible tests on samples. The supplied information does not provide an absolute guarantee, and merely indicates the result at the time when and in the circumstances in which the quality test was performed on the sample. No direct relationship may be assumed between the information

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provided and the potential results achieved by the Buyer. The results depend, among other things, on the location, cultivation measures and climate conditions.

- c. Any and all guarantees on the part of the Seller will lapse if the Buyer, or the Buyer through a third party, processes, repackages, or uses the Products incorrectly.

12. Notification of Defects and Deficiencies

- a. The Buyer must inspect the Products purchased upon delivery, or as soon as possible after delivery. In doing so the Buyer must check whether the Products delivered comply with the agreement entered into by the Parties. The Buyer's inspection shall include but is not limited to
 - (i) whether the correct Products have been delivered;
 - (ii) whether the quantity of the Products delivered corresponds with the agreement;
 - (iii) whether the Products delivered meet the quality requirements agreed to by the Parties, or if no quality requirements were agreed, the requirements that may be stipulated for normal use and/or trading purposes.
- b. The Buyer must inform the Seller in writing within three working days after delivery of any visible defects or deficiencies of the Product, specifying the lot number, delivery note and invoice details.
- c. The Buyer must inform the Seller in writing within three working days after discovery of any invisible defects of the Product, specifying the lot number, delivery note and invoice details, including test results when relevant.
- d. Complaints of defect or deficiency of a Product must be described in such a manner that the Seller or a third party can verify the accuracy of such complaints. The Buyer must keep records with regard to the use of the Products and, in the event of resale of the Products, with regard to his buyer(s). If the Buyer does not file a complaint within the aforesaid period, the Buyer's complaint will not be dealt with and rights will expire.
- e. In the event of a permanent dispute between the parties concerning a defect or deficiency of a Product, including the germination capacity, varietal trueness, varietal purity or technical purity and health, an inspection may be performed at the request of either Party by the PPIS , Bet-Dagan 50250 Israel. This request must be made within 6 months after the first official notice of a timely complaint provided to Seller according this Section 12. The costs of such investigation will be paid for by the Party concluded by the PPIS to be dominantly wrong. The inspection will be carried out on the sample of the Product retained by the Seller before the sale to the Buyer. This investigation shall be done under the supervision and control of the PPIS. The outcome of this inspection will be binding on both Parties, and without prejudice to the Parties' right to submit disputes on the consequences of this outcome to the institutes referred to in Section 19.

13. Provision of Information

- a. Information provided by the Seller in any form whatsoever is without commitment. Descriptions, recommendations and illustrations in brochures, leaflets and on websites, are based as closely as possible on experiences in tests and in practice. The Seller does not have any liability, on the basis of such information for different results obtained in the cultivated Product. The Buyer must determine whether the Products are suitable for the intended horticultural crop and/or can be used under local conditions.
- b. In the information provided by the Seller, the definitions of the used terminology are as follows:
 - i. **'Immunity'**: not subject to attack or infection by a specified pest or pathogen;
 - ii. **'Resistance'**: the ability of a plant variety to restrict the growth and development of a specified pest or pathogen and/or the damage they cause when compared to susceptible plant varieties under similar environmental conditions and pest or pathogen pressure. Resistant varieties may exhibit some disease symptoms or damage under heavy pest or pathogen pressure. Two levels of resistance are defined:
 1. **'High resistance (HR)'**: plant varieties that highly restrict the growth and development of the specified pest or pathogen under normal pest or pathogen pressure when compared to susceptible varieties. These plant varieties may, however, exhibit some symptoms or damage under heavy pest or pathogen pressure.
 2. **'Intermediate resistance (IR)'**: plant varieties that restrict the growth and development of the specified pest or pathogen, but may exhibit a greater range of symptoms or damage compared to high resistant varieties. Intermediate resistant plant varieties will still show less severe symptoms or damage than susceptible plant varieties when grown under similar environmental conditions and/or pest or pathogen pressure.

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The standard abbreviations HR (high/standard resistance) and IR (moderate/intermediate resistance) shall be used in all languages.

- iii. **'Susceptibility'**: The inability of a plant variety to restrict the growth and development of a specified pest or pathogen.
- iv. **'Tolerance'**: the ability of a plant variety to endure abiotic stress without serious consequences for growth, appearance and yield.

14. Force Majeure

- a. Force majeure means all circumstances, which cannot be attributed to the Seller and which prevent a reasonable fulfilling of the Party's obligation. Such circumstances can be strikes, fire, extreme climatic conditions, government measures, diseases, pests and defects in Products supplied to the Seller.
- b. The Seller will inform the Buyer as soon as possible if he is unable to deliver or to deliver in time due to an event of force majeure.
- c. If the event of force majeure lasts longer than 60 days, both Parties will be entitled to dissolve the agreement. In that case the Seller will not be required to pay any damages.

15. Liability

- a. Except in the event of willful misconduct or gross negligence by the Seller or the Seller's employee's, the Seller is not liable for any damage resulting from a shortcoming of the Product(s) supplied to the Buyer.
- b. The Seller will not be required to pay any damages, in the case of force majeure as described in Section 14.
- c. The Seller is not liable for any damages as a result of non-delivery or late delivery nor for failure to correctly specify the requirements as referred to in Section 6(e), if as a result thereof the order cannot, or cannot be timely, delivered.
- d. The Buyer is required to limit as much as possible the damages with regard to performances about which a complaint is filed with the Seller.
- e. The Seller is not liable for any damages caused by seed of plant material that has not been multiplied and/or reproduced by or on behalf of the Seller.
- f. If the Seller is liable on the basis of one or more conditions, such liability will be limited to the invoice value of the delivery in question; the Seller will in no event be liable for any form of consequential damage.
- g. If the Buyer is not the end-user and/or resells or redistributes the Products, he is obliged to communicate to further parties all limiting terms and conditions, including those related to Product specifications and remains responsible to Seller for any act or omission of any further party receiving the Products from Buyer which would have constituted breach of this Agreement if committed by Buyer.
- h. Except to the extent prohibited by law, Buyer assumes all liability for damages that may arise from buyer's use, harvest, storage or disposal of the products used and cultivated by buyer thereof under this agreement. Seller will not be liable to buyer for any loss, claim or demand made by buyer, or made against buyer by any third party, due to or arising from buyer's use, harvest, storage, or disposal of the products or yield thereof, or due to or arising from any other activities of buyer under this agreement.
- i. To the extent of and in not more than the delivered Products actually collected and purchase price only, the Seller represents and that: (i) Seller has utilized standard industry isolation and purity procedures in production of conventional Products; (ii) The Products delivered by Seller to Buyer under this Agreement at the Delivery Point shall conform the specifications under label description. Except as explicitly provided hereunder, Seller makes no other warranty or guarantee of any kind as to the fitness for particular purpose, quality, variety, weight, germination, merchantability, or performance of the Products.
- j. Notwithstanding anything to the contrary and to the extent permitted by law Seller shall have no have any liability to Buyer or any party (a) under or in relation to this Agreement whether in contract, tort or under any other theory of liability for economic loss, loss of profits, loss of revenue, loss of goodwill, and/or loss resulting from damage to image or reputation in each case whether direct or indirect, or any indirect or consequential loss or damage arising from or related to this Agreement, howsoever caused and whether or not such losses are foreseeable, even if that party has been advised (or is otherwise aware) of the possibility of such losses in advance. THE TOTAL AGGREGATE LIABILITY OF SELLER UNDER THIS AGREEMENT SHALL NOT EXCEED UNDER ANY CLAIM ARISING OUT OF OR RELATED TO THIS

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AGREEMENT THE AMOUNT PAID BY BUYER TO SELLER FOR THE PRODUCTS DELIEVRED HEREUNDER IN CONNECTION WITH THE PRODUCTS IN RELATION TO WHICH THE APPLICABLE CLAIM IS MADE.

16. Use of Trademarks and Signs

The Buyer may not use trademarks and signs, both registered and not registered, that are used by the Seller to distinguish his products from those of other legal entities/companies, or use trademarks and signs that are not clearly distinguishable from those of the Seller. An exception applies to the trade in products in the original packaging of the Seller with the trademarks and signs placed on them by the Seller.

17. Restriction on reproduction and / propagation

- a. Buyer is not allowed to use or attempt to use or allow any third party to use or attempt to use the delivered Products and/or components and/or harvested material for multiplication, modification, replication and/or reproduction or alter the Products **through selection, crossbreeding, other conventional plant breeding, or genetic engineering**. Buyer is also not allowed for Products and/or genetic material thereof, or components and/or harvested material hereof: I) to use or attempt to use these for the purpose of multiplication, II) **to create or attempts to create a seed variety or seed product, or use in any way for any variety improvement purposes** III) to offer for sale, IV) to sell, V) to import and/or export, and/or VI) to have material in stock for any of these purposes. This restriction also applies for varieties derived or indirectly derived from a delivered variety.
- b. In case of re-selling of the delivered Products, the Buyer shall impose the above clause on its buyer, under the penalty of a fine for each infringement. The amount of the fine will not be less than the benefit obtained by the buyer.
- c. Buyer is obliged to allow the holder of the plant breeders' rights, or the party representing him, direct access to its business, including in particular the greenhouses, in order to enable the Seller or the party representing him, to control, in case of suspicion of multiplication and/or reproduction of base material. In the Buyer's business is included as well the company activities carried out by third parties on behalf of the Buyer. Buyer will grant upon first request immediate access to all his relevant administration related to the Product and reproduction material. **Buyer will not attempt to register any intellectual rights with respect to the Products, including without limitation, new varieties, breeder's rights, or plant patent rights.**
- d. Buyer hereby acknowledges and agrees that the production from the Products herein sold will be used only as specifically authorized hereunder. Buyer agrees and acknowledges that any use of the Products sold and delivered hereunder, which is forbidden by this Agreement, will constitute a misappropriation of the personal property of Seller, and will therefore result in a breach of this Agreement. Purchaser agrees that Supplier may bring an action to recover damages as a result of the breach of this Agreement, along with reasonable attorney fees and costs associated with any action commenced in regard thereto. Purchaser agrees and acknowledged that any use of the Products purchased hereunder, which is forbidden by the Agreement will infringe upon the Seller's rights and damage Seller legitimate expectations of future seeds sales.

18. No IP Transfer or License

Except as expressly provided in this Agreement, no express or implied license or other rights in the Products delivered hereunder are provided to Buyer by Seller, under any patents, patent applications, or other proprietary rights of Seller. The rights granted by Seller to Buyer are limited to those rights expressly stated in this Agreement.

19. Conversion

- a. If a provision of these General Terms and Conditions is invalidated, that provision will automatically (by operation of law) be replaced by a valid provision that corresponds as closely as possible to the purport of the invalid provision. The parties must, if necessary, enter into reasonable consultations about the text of that new provision.
- b. Any finding of an invalid provision, shall not invalidate the other provisions of the General Terms and Conditions and the remaining provisions will remain fully valid in so far as possible.

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20. Settlement of Disputes

- a. Except when agreed to otherwise by the Parties, each Party hereby submits to the exclusive jurisdiction of the courts of Tel Aviv, Israel over any disputes under this Agreement, unless another court is competent pursuant to the applicable mandatory rules of the law chosen in Article 19.
- b. In the event of a dispute the parties will, however, first try to reach a solution in consultation, or otherwise by means of mediation, before the parties submit the dispute to an arbitration tribunal or to the civil court.

21. Applicable Law and other applicable conditions

- a. All agreements between the Seller and the Buyer are governed by the law of the State of Israel.
- b. The International Seed Federation Rules and Usage for the Trade in Seeds for Sowing Purposes apply to all agreements and/or offers for sale addressed to Buyers located outside Israel except in so far as otherwise provided in these General Terms & Conditions of Sale and Delivery. These General Terms & Conditions of Sale and Delivery and the laws of the State of Israel will govern in any case of conflict, unless both parties agree in writing to be bound by the laws of the country where the sale or delivery take place.