

ALEXANDER HARLEY SEEDS (MILNATHORT) LTD

CONDITIONS OF SALE FOR SEEDS

1. AVAILABILITY

Since seeds are organisms and their growth is subject to pests, disease and climatic conditions, all sales of United Kingdom grown seeds are subject to harvest and the Seller reserves the right in the event of market shortages to apportion such supplies as become available among his customers at his sole discretion. Where seeds sold are imported, their sale is subject to supplies being made available to the seller by his normal supplier with whom the contract for their supply has been placed.

In the event of failure of such supplies from abroad, and the seeds not being replaceable from other sources at a price no greater than that charged in the present contract, this sales agreement will be deemed to be cancelled without any liability to either party providing notice of such failure is given to the Buyer at the earliest opportunity.

2. RETAIL SUBSTITUTION

In accordance with the usual practice of the trade, the Seller reserves the right, in the event the variety ordered is not available, to substitute therefor at his option, a suitable alternative variety. If the substituted variety is not acceptable to the Buyer, he must return it unopened to the Seller within 14 days of receipt, when any price paid and transport costs will be returned in full. This sale agreement will then be deemed to be cancelled without liability to either party.

3. INCREASED CHARGES

Any increase in shipping, marine insurance, freight or landing charges between the time of sale and arrival of the vessel are for the Buyer's account.

4. FLUCTUATIONS IN THE £

If the goods which are the subject of the contract may be of foreign origin, the Seller reserves the right to adjust the price payable by the Buyer so as to reflect any alteration in the value of the £ sterling in terms of the currency of purchase between the date of sale and the rate payable on importation. The Seller also reserves the right to alter prices without notice in the event of the imposition of or increase in any tariff or import levy.

5. LATENT DEFECT

Disease of plants can be transmitted by the wind, by insects, by animals or by human agencies and may be seed borne or soil borne. The Seller believes the seed hereby sold to be free from latent defect, but it is not a condition of sale nor does the Seller warrant that any seed sold shall be free from such defect and will not be responsible in any way for the resultant crop.

6. LIMITATION OF LIABILITY

The Seller warrants that the seed supplied shall be of the species and type specified in the contract and accepts liability for any damage resulting from any breach of this warranty. Except as provided above, in the event of any seeds sold not complying with the express terms of the contract of sale, or any seeds of the correct species and type proving defective in varietal purity, the Seller will at his option replace the defective seeds free of charge to the Buyer or will refund all payments made by the Buyer in respect of the defective seeds and this shall be the limit of the Seller's obligation. All liability is excluded for any loss or damage arising from the use of any seed supplied and for any consequential loss of damage arising out of such use or any failure in the performance of 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 be depend on so many natural and other factors beyond the Sellers control, save for at the Sellers option liability for any such replacement or

refund as foresaid. In accordance with the established custom of the seed trade, any express or implied conditions, statement or warranty, statutory or otherwise, not stated in these conditions is also excluded. The price of any seeds sold or offered for sale is based upon the foregoing limitations upon the Seller'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 Buyer acknowledges that the limitations of the Seller's liability is fair and reasonable.

#### 7. PLANT VARIETIES AND SEEDS ACT 1964 (WITH SUBSEQUENT AMENDMENTS)

The price of any variety which becomes the subject of a grant of plant breeders' rights under the Plant Varieties and Seeds Act 1964, with subsequent amendments, will be adjusted to include the cost of any royalty payable 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.

#### 8. COMPLAINTS

No complaint under the terms of these conditions of sale can be considered unless clear 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.

#### 9. SEED TREATMENT

a) Where at the Buyer's request any treatment whether chemical or otherwise is supplied to the seed, the Seller'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 seller accepts no responsibility whatsoever for the effectiveness of such treatment or any damage direct or consequential which may result therefrom.

b) Where the seeds have been treated with a liquid or powder to control pests or diseases, or have been fumigated or pelleted, the purity and germination percentages are based on tests made before treatment.

c) All Dwarf beans, unless otherwise specifically stated, have been fumigated with carbon disulphide for the control of Bean Weevil (*Bruchus Obtectus*).

#### 10. REPRODUCTION OF SEED

All seeds are offered and sold for the production of consumer crops and not for reproduction of seed. No responsibility whatsoever can be accepted for any seed crops produced.

#### 11. RETURNED SEED (THIS CLAUSE ONLY APPLIES TO HORTICULTURAL SEEDS)

The acceptance of return goods for credit where such goods are found to be surplus to the requirements of the Buyer is at the discretion of the Seller. In no event will the return of such goods be accepted for credit, unless they are returned, the Seller's prior permission having been obtained, seals unbroken in the original packaging and in an undamaged condition within 5 working days of collection quoting the original invoice number. All goods returned for credit are subject to a handling charge which will be made known to the Purchaser at the time he requests permission to return them. Goods which were specially ordered cannot be returned for credit unless it is alleged that they are not of merchantable quality.

#### 12. FORCE MAJEURE

Wholesale

Neither Buyers nor Sellers shall be responsible for delay in delivery of the goods or any part thereof occasioned by any Act of God, action by any Government, strike, lockout, combination of workmen, breakdown of

machinery, power failure or fire, provided that the party invoking this clause despatched written notice to the other party within 7 consecutive days of his knowledge of the occurrence, or not later than 7 consecutive days before the beginning of the delivery period, whichever is the later. In case of resale, such information shall be passed on without delay. If delivery is delayed by more than 30 consecutive days from the end of the delivery period the party not invoking this clause shall have the option of cancelling the delayed portion of the contract, if not already in course of transit, by giving to the other party written notice to that effect, but shall not be entitled to compensation. A further extension of delivery of 30 days may be mutually agreed if requested by the party invoking force majeure. If delivery under this clause be prevented during this extension, the contract or any unfulfilled party thereof shall be cancelled. Neither party shall have a claim against the other for delay or non-fulfilment under this clause, provided that the party invoking this clause shall have supplied to the other, if required, satisfactory evidence justifying the delay or non-fulfilment.

#### Retail

The seller shall not be responsible for delay in delivery of the goods or any part thereof occasioned by any Act of God, action by any Government, strike, lockout, combination of workmen, riot or civil commotion, breakdown of machinery, power failure, fire, failure of crop, fuel shortage, loss and/or detention at sea, or any other contingency beyond his control. Should any of the goods be rendered unfit for delivery by reason of any of the above acts, the contract so far related to those goods shall be deemed to be discharged.

#### 13. DELIVERY

Each delivery or consignment shall stand as a separate contract.

#### 14. PROPERTY IN GOODS AND RISK

- a) Until paid for in full, all goods supplied by the Seller remain his property.
- b) Risk passes to the Buyer on delivery on the goods.

#### 15. INSOLVENCY

- a) If either party to the contract:

- i) has a Receiver or Administrative Receiver appointed of any its property or business undertaking; or
- ii) announces that it has ceased or will or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing contracts); or
- iii) suspends payment of its debts or fails to pay, is unable to pay or admits or states its inability to pay, its debts as they fall due; or
- iv) disposes or threatened to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party); or
- v) convenes, calls or hold a meeting of its creditors or makes any arrangement, voluntary arrangement or composition with its creditors; or

- b) If

- i) the directors of one party make or state an intention to make or give notice of a proposal for voluntary arrangement under Part 1 of the Insolvency Act 1986; or
- ii) a petition is presented for winding-up or administration of one party; or

- iii) a resolution (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice had been given to the other party who has approved it) is passed for the voluntary winding up of one party; or
- iv) one party is dissolved; or
- v) a Statutory Demand in bankruptcy is served on one party; or
- vi) an Interim Order under Part VIII of the Insolvency Act 1986 is applied for or made in respect of one party; or
- vii) a Bankruptcy Petition is presented against one party; or
- viii) a party suffers the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises; or
- ix) a party being a partnership any of the above events occurs with respect to the partnership or to any partner therein; then

notwithstanding any previous arrangement with the other party for deferred payments the full or full remaining price of any goods delivered by the innocent party shall become immediately due to it: and

the innocent party shall have the right upon giving written notice to the other party without prejudice to any other rights and remedies available to it forthwith to cancel and/or suspend or to refuse to accept any further deliveries and/or to terminate the contract at any time after becoming aware of the above circumstances.

c) Whenever any of these rights are exercised by the innocent party, the innocent party will not be liable to pay any compensation to the other party.

## 16. ARBITRATION

Any dispute (other than a claim for any unpaid debt and as provided under ( c ) below arising out of this contract shall be referred to arbitration as follows:

- a) In the case of a dispute between a member of the National Farmers' Union for England and Wales, or a member of the National Farmers Union of Scotland and a member of the United Kingdom Agricultural Supply Trade Association, the dispute shall be referred to arbitration under the rules for the conduct of arbitration jointly agreed between those three organisations; and the making of this contract shall be deemed to be respectively an offer and acceptance on writing to settle any dispute arising out of this contract by arbitration as required by those rules.
- b) Unless otherwise agreed, in every other case the dispute shall be referred to arbitration in accordance with the arbitration rules of the United Kingdom Agricultural Supply Trade Association, 3 Whitehall Court, London, SW1A 2EQ and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.
- c) If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of arbitrators to resolve, or is a dispute of necessity involves a third party who is not subject to arbitration, either party before the time for commencing arbitration proceedings has lapsed can, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts.

Should such consent be unreasonably withheld or no answer received within 28 days, the party making the request shall be at liberty to commence Court proceedings, leaving it to the other party if the other party so wishes to apply for a stay of proceedings invoking the arbitration clause. The Court will then decide whether the arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not

run (or if started not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.

#### 17. TIME LIMITS FOR CLAIMING ARBITRATION

Arbitration proceedings must be commenced as regards claims relating to quantity or quality within 28 days from the date of the arrival of the goods at their ultimate destination in the UK and as regards technical claims within 90 days from the last day of the contract period. Subject to any special conditions relating to leave being granted to institute Court proceedings contained in the arbitration rules of the United Kingdom Agriculture Supply Trade Association, or those agreed between them and the National Farmers Union, whichever is applicable, the making of an award shall be a condition precedent to any right of action by either party or any person claiming under either of them, so that if arbitration proceedings regarding any claims are not instituted within the time limit prescribed all causes of action relating to that claim, whether by way of arbitration or in any Courts of Law, are deemed time barred and waived.

#### 18. CLAIMS

Claims based upon those defects of quantity, quality or condition which should be apparent upon reasonable examination shall be made immediately known by telex, telephone or telemessage and written confirmation despatched within 5 business days of arrival of the goods at the destination to which they have been consigned.

#### 19. NON-PAYMENT

The Seller reserves the right to withhold deliveries under this contract until all and any outstanding payments under this or any other contract with him by the Buyer have been received and reserves lien upon – and the right to sell or tother wise dispose of – all goods the subject of this contract, whether appropriated to it or not, in respect of any such payments.

#### 20. STANDARDS

Seeds sold which is the subject of this contract is guaranteed to comply at the time delivery with the UK Seeds Regulations currently in force.

All information whether contained in the Seller's catalogue or given by his staff and related to varieties, varietal characteristics or periods of maturity or fitness for any particular purpose or otherwise relating to the performance of seeds is given for general guidance only as variation in local or climatic conditions can render such information inaccurate. Buyers are therefore advised that any such information given to them does not constitute a representation as to these matters and should not be relied on as such. Buyers should satisfy themselves that any seeds which they order are of a variety and performances satisfactory for their requirements and order such seeds at their own risk.

Buyers are advised that Sellers' staff have no authority to give more than general guidance as described above and the seller disclaims liability for any advice given or opinion expressed by them. Such advice is followed, or such opinion acted upon, entirely at the Buyer's own risk.

#### 21. ACCEPTANCE OF TERMS

The giving or sending of an order constitutes an acceptance of these terms by the Buyer who, if he does not accept these terms must notify the Seller immediately.